



Published by the Division of the Federal Register, The National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. L. 500), under regulations prescribed by the Administrative Committee, with the approval of the President.

The Administrative Committee consists of the Archivist or Acting Archivist, an officer of the Department of Justice designated by the Attorney General, and the Public Printer or Acting Public Printer.

The daily issue of the *FEDERAL REGISTER* will be furnished by mail to subscribers, free of postage, for \$1 per month or \$10 per year; single copies 10 cents each; payable in advance. Remit by money order payable to Superintendent of Documents, Government Printing Office, Washington, D. C.

Correspondence concerning the publication of the *FEDERAL REGISTER* should be addressed to the Director, Division of the Federal Register, The National Archives, Washington, D. C.

TABLE OF CONTENTS

Department of the Interior:

National Bituminous Coal Commission:

Schedule of minimum prices, supplements:	Page
District No. 1	137
District No. 2	136, 138
District No. 3	138
District No. 7	138
District No. 8	136, 140
District No. 11	136
District No. 13	137

Interstate Commerce Commission:

Fifteen Percent Case, 1937, notice	141
------------------------------------	-----

Securities and Exchange Commission:

Notices of and orders for hearings in the matter of applications by:

Burlington Railway and Light Co., et al	141
Cabot, Godfrey L., Inc.	141
Central New Hampshire Power Co.	142
Petroleum Oil & Gas Co., et al	142
Utilities Holding Corp.	142
Washington Gas Light Co., and Washington and Suburban Cos.	142

Treasury Department:

Bureau of Customs:

Drawback merchandise, extension of period for exportation	119
Merchandise imported during 1934 and 1935, extensions of warehousing period	119

Bureau of Internal Revenue:

Income tax—Regulations 94 amended to accord with the Revenue Act of 1937	120
--------------------------------------------------------------------------	-----

Bureau of Internal Revenue.

[T. D. 4791]

INCOME TAX

REGULATIONS 94 AMENDED TO ACCORD WITH THE REVENUE ACT OF 1937

To Collectors of Internal Revenue and Others Concerned:

In order to accord with the Revenue Act of 1937, approved August 26, 1937 (Public, No. 377, Seventy-fifth Con-

gress, Chapter 815, first session), Regulations 94¹ are amended as follows:

The first paragraph of article 1-1 is amended to read as follows:

"ARTICLE 1-1. Scope of regulations.—These regulations deal with the taxes upon net income imposed by Title I of the Revenue Act of 1936 and that title, as amended by the Revenue Act of 1937, including the tax imposed by section 102 of Title I of the Revenue Act of 1936 upon the net income of certain corporations, and the tax imposed by Title IA of the Revenue Act of 1936 and that title, as amended by the Revenue Act of 1937, upon the undistributed adjusted net income of personal holding companies. (See section 351.)"

Article 1-1 is further amended by adding at the end thereof a new paragraph to read as follows:

"The references in these regulations to the Revenue Act of 1936 and to titles, sections, subsections, or paragraphs thereof shall be considered, wherever consistent, as references also to such Act, titles, sections, subsections, or paragraphs thereof as amended by the Revenue Act of 1937."

Article 3-1 is amended to read as follows:

"ART. 3-1. Division of regulations.—These regulations have been divided into 37 chapters. Chapter I relates to Introductory Provisions, Subtitle A of Title I. Chapter II to IX relate to General Provisions, Subtitle B of Title I. Chapters X to XXII relate to Supplements A to D of Supplemental Provisions, Subtitle C of Title I. Chapters XXIII to XXIX relate to Supplements E to K of Supplemental Provisions, Subtitle C of Title I. Chapters XXX to XXXIV relate to Supplements L to P of Supplemental Provisions, Subtitle C of Title I. Chapter XXXV relates to Title IA, Surtax on Personal Holding Companies, prior to its amendment by the Revenue Act of 1937. Chapter XXXV (A) relates to Title IA, as amended by the Revenue Act of 1937. Chapter XXXVI relates to Title VIII, General Provisions of the Act."

The following is inserted immediately preceding article 4-1, relating to application of regulations to special classes of taxpayers:

"Section 207 (a) of Title II of the Revenue Act of 1937, relating to foreign personal holding companies, provides:

"Sec. 207. Minor Amendments to Title I of 1936 Act."

"(a) Section 4 of the Revenue Act of 1936 is amended by adding at the end thereof a new subsection to read as follows:

"(i) Foreign personal holding companies and their shareholders—Supplement P."

Article 4-1, relating to application of regulations to special classes of taxpayers, is amended by adding after the number XXIX appearing for the first time in the first sentence thereof, the following: "and Chapter XXXIV."

Article 4-1 is further amended by inserting the end of the table preceding the last paragraph the following:

"CHAPTER XXXIV—FOREIGN PERSONAL HOLDING COMPANIES"

Article 4-1 is further amended by changing the clause "see articles 351-1 to 351-9, inclusive" appearing in the next to the last sentence thereof to "see articles 351-1 to 351-9, inclusive, and articles 351-1 (1937) to 358-2, inclusive."

Article 4-1 is further amended by inserting between the last two sentences thereof the following: "For provisions relating to the taxation to shareholders of the income of foreign personal holding companies and requiring certain information returns, see articles 331-1 to 340-2, inclusive."

Article 11-1, relating to income tax on individuals, is amended by substituting for the last two sentences thereof the following: "See section 351 (d) as to shareholders of personal holding companies. See Supplement P as to share-

¹ F. R. 1802, 1867, 1947. For other amendments of Regulations 94 made necessary by the Revenue Act of 1937, see Treasury Decisions 4782 and 4784, approved December 7, 1937 and December 15, 1937, respectively (2 F. R. 3213, 3279 (DI)).

holders of foreign personal holding companies. See section 117 as to the treatment of capital gains and capital losses."

The following is inserted immediately preceding article 12-1, relating to surtax on individuals:

"Section 2 of Title I of the Revenue Act of 1937, relating to personal holding companies, provides in part:

"*Sec. 2. Changes in Cross-References.*

"Section 12 (c) * * * of the Revenue Act of 1936 are amended by striking out "section 351" and inserting in lieu thereof "Title IA"."

The following is inserted immediately before article 14-1, relating to surtax on undistributed profits of corporations:

"Section 2 of Title I of the Revenue Act of 1937, relating to personal holding companies, provides in part:

"*Sec. 2. Changes in Cross-References.*

"Section 14 (f) * * * of the Revenue Act of 1936 are amended by striking out "section 351" and inserting in lieu thereof "Title IA"."

The last sentence of article 21-1 is amended by striking out "and 351" and inserting in lieu thereof "Title IA and Title IA, as amended".

The last sentence of the first paragraph of article 22 (a)-1 is amended to read as follows:

"As to dividends, see sections 115 and 337 (b)."

The following is inserted at the end of Chapter III:

"Section 207 (b) of Title II of the Revenue Act of 1937, relating to foreign personal holding companies, provides:

"*Sec. 207. Minor Amendments to Title I of 1936 Act.*"

"(b) Section 22 of such Act is amended by adding at the end thereof a new subsection to read as follows:

"*(g) Foreign Personal Holding Companies.*—For provisions relating to gross income of foreign personal holding companies and of their shareholders, see section 334."

The last paragraph of article 23 (b)-1 is amended by adding at the end thereof the following:

"As to other amounts of interest not deductible under section 23 (b), see section 24 (c), as added by the Revenue Act of 1937."

The first sentence of article 23 (e)-1, relating to losses by individuals, is amended by substituting for the clause, "section 24 (a) (6), relating to losses from sales or exchanges of property between the members of a family or between a corporation and its shareholders," the following:

"section 24 (a) (6) (prior to the amendment of section 24 (a) by the Revenue Act of 1937) relating to losses from sales or exchanges of property between the members of a family or between a corporation and its shareholders; section 24 (b) (as added by the Revenue Act of 1937) relating to losses from sales or exchanges of property between persons designated therein;"

The first sentence of article 23 (f)-1, relating to losses by corporations, is amended to read as follows:

"Losses sustained by domestic corporations during the taxable year and not compensated for by insurance or otherwise are deductible except insofar as not prohibited or limited by sections 23 (g), 24 (a) (6) (prior to the amendment of section 24 (a) by the Revenue Act of 1937), 24 (b) (as added by the Revenue Act of 1937), 112, 117, 118, and 251."

The following is inserted immediately before article 24-1, relating to personal and family expenses:

"Section 301 of Title III of the Revenue Act of 1937, relating to disallowed deductions, provides:

"*Sec. 301. Disallowed deductions.*

"(a) Section 24 (a) of the Revenue Act of 1936 is amended to read as follows:

"*(a) General rule.*—In computing net income no deduction shall in any case be allowed in respect of—

"*(1) Personal, living, or family expenses;*

"*(2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;*

"*(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;*

"*(4) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy; or*

"*(5) Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this title.*

"*(b) Losses from sales or exchanges of property.*—

"*(1) Losses disallowed.*—In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—

"*(A) Between members of a family, as defined in paragraph (2) (D);*

"*(B) Except in the case of distributions in liquidation, between an individual and a corporation more than 50 per centum in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;*

"*(C) Except in the case of distributions in liquidation, between two corporations more than 50 per centum in value of the outstanding stock of each of which is owned by or for the same individual, if—*

"*(i) Either one of such corporations, with respect to the taxable year (if beginning after December 31, 1935) of the corporation preceding the date of the sale or exchange, was a personal holding company as defined in section 352, or*

"*(ii) Either one of such corporations, with respect to the taxable year (if not beginning more than 12 months before the date of the enactment of the Revenue Act of 1937) of the corporation preceding the date of the sale or exchange, was a foreign personal holding company as defined in section 331;*

"*(D) Between a grantor and a fiduciary of any trust;*

"*(E) Between the fiduciary of a trust and the fiduciary of another trust, if the same person is a grantor with respect to each trust; or*

"*(F) Between a fiduciary of a trust and a beneficiary of such trust.*

"*(2) Stock ownership, family, and partnership rule.*—For the purposes of determining, in applying paragraph (1), the ownership of stock—

"*(A) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;*

"*(B) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;*

"*(C) An individual owning (otherwise than by the application of subparagraph (B)) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;*

"*(D) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and*

"*(E) Constructive ownership as actual ownership.*—Stock constructively owned by a person by reason of the application of subparagraph (A) shall, for the purpose of applying subparagraph (A), (B), or

(C), be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of subparagraph (B) or (C) shall not be treated as owned by him for the purpose of again applying either of such subparagraphs in order to make another the constructive owner of such stock.

““(3) *Special rule for year 1936.*—In applying paragraph (1) (C) (i) in a case where the preceding taxable year therein referred to began in the calendar year 1936, the determination as to whether the corporation was a foreign personal holding company shall be made under section 351 (b) (1) before the amendment of Title IA made by section 1 of the Revenue Act of 1937.

““(c) *Unpaid expenses and interest.*—In computing net income no deduction shall be allowed in respect of expenses incurred under section 23 (a) or interest accrued under section 23 (b)—

““(1) If not paid within the taxable year or within two and one half months after the close thereof; and

““(2) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

““(3) If, at the close of the taxable year of the taxpayer or at any time within two and one half months thereafter, both the taxpayer and the person to whom the payment is to be made are persons between whom losses would be disallowed under section 24 (b).

“(b) Section 24 (b) and section 24 (c) of the Revenue Act of 1936, as in force prior to the amendment to section 24 made by subsection (a) of this section, are amended by striking out “(b)” and “(c)” and inserting in lieu thereof “(d)” and “(e).”

“Section 302 of Title III of the Revenue Act of 1937 provides:

“*Sec. 302. Effective Dates.*

“The amendments made by this title shall apply only with respect to taxable years beginning after December 31, 1936.”

The heading and the first paragraph of article 24-5 (exclusive of the example therein given) is amended to read as follows:

“ART. 24-5. *Losses from sales or exchanges between certain classes of persons for taxable years beginning prior to January 1, 1937.*—The application of section 24 (a) (6) (prior to the amendment of section 24 (a) by the Revenue Act of 1937) may be illustrated generally by the following example.”

The last paragraph of article 24-5 is amended to read as follows:

“Under section 24 (a) (6) (prior to its amendment) none of the above-described losses of A are deductible from his gross income.”

Article 24-6 is renumbered as article 24-8 and the following new article is inserted after article 24-5, as amended:

“ART. 24-6. *Losses from sales or exchanges between certain classes of persons for taxable years beginning after December 31, 1936.*—(a) *Individuals (including fiduciaries).*—In the case of sales or exchanges of property, directly or indirectly, between individuals (including fiduciaries) section 24 (b) (1), as added by the Revenue Act of 1937, provides that no deduction shall be allowed with respect to losses arising therefrom in the following cases: (1) between members of a family as defined in section 24 (b) (2) (D); (2) between fiduciaries of trusts having a common grantor; (3) between a grantor and a fiduciary of the same trust; or (4) between a fiduciary of a trust and a beneficiary of such trust.

“(b) *Corporations (including shareholders).*—In the case of sales or exchanges of property where a corporation not acting in a fiduciary capacity is a party to the transaction, section 24 (b) (1) also provides that under certain circumstances no deduction shall be allowed with respect to losses

arising from such sales or exchanges, directly or indirectly, between a corporation and an individual shareholder (see section 24 (b) (1) (B)) or between two corporations (see section 24 (b) (1) (C)). Under section 24 (b) (1) (B) it is necessary that there be owned, directly or indirectly, by or for the individual a party to the transaction, more than 50 percent in value of the stock of the other party to the transaction on the date of the sale or exchange. Under section 24 (b) (1) (C), however, as provided therein, not only must more than 50 percent in value of the outstanding stock of each of such corporations be owned, directly or indirectly, on the date of the sale or exchange by or for the same individual, but one of the corporations must be either a personal holding company as defined in section 352, or a foreign personal holding company as defined in section 331, for the taxable year preceding the date of the sale or exchange. Section 24 (b) (3), as added by the Revenue Act of 1937, makes an exception to the rule provided for in paragraph (1) of section 24 (b) (1) (C), by requiring that in a case in which the preceding taxable year referred to in that paragraph is the calendar year 1936 or any fiscal year beginning in 1936, the provisions of section 351 (b) (1) before amendment of Title IA by the Revenue Act of 1937 shall apply in determining whether with respect to such year either of the corporations was a personal holding company. It is not necessary under either rule that either of the corporations be a personal holding company or a foreign personal holding company on the date of the sale or exchange.

“(c) *Stock ownership rule.*—For the purpose of paragraph (b) of this article, the ownership of stock shall be determined in accordance with the rules provided in section 24 (b) (2), as added by the Revenue Act of 1937. In order that an individual shall be considered under section 24 (b) (2) (C) as constructively owning the stock of a corporation owned, directly or indirectly, by or for his partner, such individual must himself own, directly or indirectly, stock of such corporation. On the other hand, under section 24 (b) (2) (B) an individual need not own any stock of a corporation, either directly or indirectly, in order to be considered as constructively owning the stock of such corporation which is owned, directly or indirectly, by or for any member of his family.

“(d) *Illustrations of the application of section 24 (b) as added by the Revenue Act of 1937.*—The application of section 24 (b), as added by the Revenue Act of 1937, may be illustrated by the following examples:

“Example (1).—On July 1, 1937 the M Corporation owned all of the stock of the O Corporation which for the calendar year 1936 was a personal holding company under section 351 (b) (1) before the amendment of Title IA by the Revenue Act of 1937. On that day all of the outstanding stock of the M Corporation was owned by A. By the application of the rule provided in section 24 (b) (2) (A), the stock in the O Corporation owned by the M Corporation is considered to be owned constructively by A, the sole stockholder of the M Corporation. Such constructive ownership of the stock of the O Corporation by A is considered as actual ownership for the purpose of applying the family rule provided in section 24 (b) (2) (B) to make a member of A's family, as, for example, his wife AW, the constructive owner of the stock of the O Corporation. But the constructive ownership of the O Corporation stock by AW may not be considered as actual ownership by AW for the purpose of again applying the family rule so as to make a member of AW's family, for example, her father, AWF, in turn constructive owner of such stock. These rules apply in the same manner and with the same effect in determining the ownership of stock in the M Corporation.

“Accordingly, assuming that A, AW, AWF, the M Corporation and the O Corporation make their income returns on the basis of a calendar year and that there was no distribution in complete or partial liquidation of the M or O Corporation, no deduction is allowable under section 24 (b) (1), as added by the Revenue Act of 1937, with respect to losses

from sales or exchanges of property made on July 1, 1937 between any of such individuals or corporations, except as between A and AWF and between AWF and the M or O Corporation.

"Example (2).—On June 15, 1937, all of the stock of the N Corporation was owned in equal proportions by A and A's partner, AP. Except in the case of distributions in complete or partial liquidation by the N Corporation, no deduction is allowable with respect to losses from sales or exchanges of property made on June 15, 1937, between A and the N Corporation or AP and the N Corporation inasmuch as, by the application of section 24 (b) (2) (C), each partner is considered as having owned the stock owned by the other and, therefore, is considered as having owned more than 50 percent in value of the outstanding stock of the N Corporation. Deductions for losses from sales or exchanges between A's brother, AB, and the N Corporation, or between AP and A, or AP and AB are not prohibited by section 24 (b), as added by the Revenue Act of 1937.

"Example (3).—Assuming the same facts as stated in the example given under article 24-5, as amended, except that the losses were incurred during the calendar year 1937, none of the losses of A would be deductible from his gross income."

The following new article is inserted under article 24-6, as amended:

"ART. 24-7. Disallowance of deductions for unpaid expenses and interest."

The application of section 24 (c), as added by the Revenue Act of 1937, may be illustrated by the following example:

"Example.—A is the holder and owner of an interest-bearing note executed by the M Corporation all of the stock of which is owned by him. A and the M Corporation make their income returns on the basis of a calendar year but the M Corporation makes its returns on the accrual basis and A makes his returns on the cash receipts and disbursements basis. The M Corporation does not pay any interest on such note during the calendar year 1937 or within two and one-half months after the close thereof, but claims a deduction for the year 1937 with respect to the interest accruing on the note in that year. A, being on the cash receipts and disbursements basis, does not include such interest in his return for the year 1937. By the application of section 24 (c), as added by the Revenue Act of 1937, no deduction for such interest is allowable in computing the net income of the M Corporation for the year 1937. The provisions of such section 24 (c) do not otherwise affect the general rules governing the allowance of deductions under the accrual basis. Hence in the event the M Corporation should pay such interest after March 15, 1938, no deduction therefor would be allowable in computing its net income for the year in which the payment was made."

The following is inserted immediately before article 48 (e)-1, relating to taxation of mutual investment companies in general:

"Section 602 of Title VI of the Revenue Act of 1937, relating to miscellaneous provisions, provides:

"SEC. 602. Mutual investment companies.

"(a) Section 48 (e) (1) of the Revenue Act of 1936 is amended by striking out "other than a personal holding company as defined in section 351" and inserting in lieu thereof "except as provided in paragraph (3)".

"(b) Such section 48 (e) is further amended by adding at the end of such subsection a new paragraph to read as follows:

"(3) *Corporations excepted.*—This section shall not apply to any corporation—

"(A) With respect to a taxable year beginning after December 31, 1936, if the corporation is with respect to

such year a personal holding company as defined in section 352.

"(B) With respect to a taxable year beginning before January 1, 1937, if the corporation is with respect to such year a personal holding company as defined in section 351 (b) (1) before the amendment of Title IA by section 1 of the Revenue Act of 1937.

"(C) With respect to a taxable year ending after the date of the enactment of the Revenue Act of 1937, if the corporation is with respect to such year a foreign personal holding company as defined in section 331."

The first sentence of article 48 (e)-2, relating to the definition of a mutual investment company, is amended to read as follows:

"The term 'mutual investment company' means a corporation, whether chartered or incorporated, or created under a trust instrument or otherwise, as an investment trust, and whether of the fixed or general management type (other than corporations excepted by section 48 (e) (3)), which complies with all the conditions prescribed by section 48 (e)."

The first and second sentences of article 48 (e)-5, relating to records to be kept for the purpose of determining whether a company claiming to be a mutual investment company is a personal holding company, are amended by inserting after the words "section 351" and "section 351 (b) (1)", respectively, the phrase, "prior to the amendment of Title IA by the Revenue Act of 1937."

Article 48 (e)-5 is further amended by adding after the third sentence thereof the following:

"For the purpose of determining whether a foreign corporation claiming to be a mutual investment company with respect to a taxable year ending after August 26, 1937, is a foreign personal holding company as defined in section 331, the permanent records of the foreign corporation with respect to taxable years ending after August 26, 1937, shall show, to the best of the knowledge and belief of the actual owners of its stock, the maximum number of shares of the corporation (including the number and face value of securities convertible into stock of the corporation) to be considered as constructively owned by each of the actual owners of any of its stock at any time during the corporation's taxable year, as provided in section 333 and articles 333 (a)-1 to 337 (a)-7 and article 333 (b)-1. For the purpose of determining whether a corporation claiming to be a mutual investment company with respect to a taxable year beginning after December 31, 1936, is a personal holding company as defined in section 352 of Title IA, as amended by the Revenue Act of 1937, the permanent records of the corporation with respect to taxable years beginning after December 31, 1936, shall show, to the best of the knowledge and belief of the actual owners of its stock, the maximum number of shares of the corporation (including the number and face value of securities convertible into stock of the corporation) to be considered as constructively owned by each of the actual owners of any of its stock at any time during the last half of the corporation's taxable year as provided in section 354 of Title IA, as amended by the Revenue Act of 1937, and articles 354 (a)-1 to 354 (a)-7 and article 354 (b)-1."

Article 48 (e)-5 is further amended by adding at the end thereof the following paragraph:

"The provisions of the first paragraph of this article requiring statements to be demanded not later than thirty days after the close of the company's taxable year, insofar as such statements relate to the maximum number of shares of stock of the company to be considered as constructively owned by an individual at any time during the fiscal year of the company ending after August 26, 1937, and on or before November 30, 1937, shall be considered as having been complied with if such statements are demanded not later than January 31, 1938."

The paragraph numbered (4) of article 48 (e)-6, relating to additional information required in returns of shareholders, is amended by inserting after the words "section

351" the phrase "prior to the amendment of Title IA by the Revenue Act of 1937."

The paragraph numbered (5) of article 48 (e)-6, is amended by striking out the word "and" appearing at the end of that paragraph.

The paragraph numbered (6) of article 48 (e)-6 is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon.

Article 48 (e)-6 is further amended by adding after the paragraph numbered (6) two new paragraphs to provide:

"(7) For taxable years ending after August 26, 1937, the maximum number of shares (including the number and face value of securities convertible into stock of the company) in any foreign corporation claiming to be a mutual investment company to be considered as constructively owned by such individual at any time during the company's taxable year as provided in section 333 and articles 333 (a)-1 to 33 (a)-7 and article 333 (b)-1; and

"(8) For taxable years beginning after December 31, 1936, the maximum number of shares (including the number and face value of securities convertible into stock of the corporation) in any domestic corporation claiming to be a mutual investment company to be considered as constructively owned by such individual at any time during the last half of the corporation's taxable year, as provided in section 354 of Title IA, as amended, and articles 354 (a)-1 to 354 (a)-7 and article 354 (b)-1."

The following is inserted immediately before article 54-1 relating to aids to collection of tax:

"Section 207 (c) of Title II of the Revenue Act of 1937, relating to foreign personal holding companies, provides:

[*"Sec. 207. Minor Amendments to Title I of 1936 Act."*]

"(c) Section 54 of such Act is amended by adding at the end thereof a new subsection to read as follows:

"(e) *Foreign personal holding companies.*—For information returns by officers, directors, and large shareholders, with respect to foreign personal holding companies, see sections 338, 339, and 341. For information returns by attorneys, accountants, and so forth, as to formation, and so forth, of foreign corporations, see sections 340 and 341."

The first sentence of article 55 (b)-2 is amended by inserting after the words "Title IA of that Act" the following: "or Title IA of that Act as amended."

The following is inserted immediately before article 102-1, relating to taxation of corporations formed or utilized for avoidance of surtax:

"Section 2 of Title I of the Revenue Act of 1937, relating to personal holding companies, provides in part:

[*"Sec. 2. Changes in Cross-References."*]

"Section 102 (e) of the Revenue Act of 1936 are amended by striking out "section 351" and inserting in lieu thereof "Title IA"."

"Section 601 of Title VI of the Revenue Act of 1937, relating to miscellaneous provisions, provides:

[*"Sec. 601. Corporations Excepted From Section 102."*]

"(a) Section 102 (a) of the Revenue Act of 1936 is amended by striking out "(other than a personal holding company as defined in section 351)" and inserting in lieu thereof "(except as provided in subsection (f))."

"(b) Such section 102 is further amended by adding at the end thereof a new subsection to read as follows:

"(f) *Corporations Excepted.*—This section shall not apply to any corporation—

"(1) With respect to a taxable year beginning after December 31, 1936, if the corporation is with respect to such year a personal holding company as defined in section 352.

"(2) With respect to a taxable year beginning before January 1, 1937, if the corporation is with respect to such year a personal holding company as defined in

section 351 (b) (1) before the amendment of Title IA by section 1 of the Revenue Act of 1937.

"(3) With respect to a taxable year ending after the date of the enactment of the Revenue Act of 1937, if the corporation is with respect to such year a foreign personal holding company as defined in section 331."

The following is substituted for the second sentence of the first paragraph of article 102-1, relating to taxation of corporations formed or utilized for avoidance of surtax: "For corporations to which section 102 does not apply, see section 102 (a) prior to its amendment by the Revenue Act of 1937, and section 102 (f)."

The following is substituted for clause numbered (2) of the second paragraph of article 102-1:

"(2) is composed in whole or in part of nonresident alien individuals who, by the application of section 211 (b) or 211 (c), would be subject to surtax with respect to distributions of the corporation which if made would constitute income from sources within the United States (see section 119) or"

The last sentence of the second paragraph of article 102-1 is amended to read as follows:

"On the other hand, the tax imposed by section 102 will not apply even though a foreign corporation, whether resident or nonresident, derives income from sources within the United States, if it is composed entirely of nonresident alien individuals who, by the application of section 211 (a) as amended, would not be subject to surtax with respect to distributions of the corporation if made."

The following is inserted immediately before article 113 (a) (5)-1, relating to the basis of property acquired by bequest, devise, or inheritance:

"Section 204 of Title II of the Revenue Act of 1937 enacted August 26, 1937, relating to foreign personal holding companies, provides:

[*"Sec. 204. Basis of Stock in Foreign Personal Holding Company Acquired From Decedent."*]

"Section 113 (a) (5) of the Revenue Act of 1936 is amended by adding at the end thereof a new sentence to read as follows:

"If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, and if the decedent died after the date of the enactment of the Revenue Act of 1937, and if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was a foreign personal holding company, then the basis shall be the fair market value of such property at the time of such acquisition or the basis in the hands of the decedent, whichever is lower."

Paragraph (b) of article 113 (a) (5)-1, relating to the basis of property acquired by bequest, devise, or inheritance, is amended to read as follows:

"(b) *Basis.*—Section 113 (a) (5) provides two rules for determining the basis of property transmitted at death, a rule governing property generally and a special rule governing stock in a foreign personal holding company.

"(1) *General rule.*—Except as prescribed in paragraph (2) the basis of property acquired from a decedent by will or under the law governing the descent and distribution of the property of decedents is the fair market value at the time of such acquisition. Since under the law governing wills and the distribution of the property of decedents, all titles to property acquired by bequest, devise, or inheritance relate back to the death of the decedent, even though the interest of him who takes the title was, at the date of death of the decedent, legal, equitable, vested, contingent, general, specific, residual, conditional, executory, or otherwise, the time of the acquisition of such property is the death of the decedent. For example, if distribution of personal property left by a decedent is not made until one year after his death, the basis of such

property in the hands of the legatee is its fair market value at the time when the decedent died, and not when the legatee actually received the property; or, if the bequest is of the residue to trustees in trust, and the executors do not distribute the residue to such trustees until five years after the death of the decedent, the basis of each piece of property left by the decedent and thus received, in the hands of the trustees, is its fair market value at the time when the decedent dies; or, if the bequest is to trustees in trust to pay to A during his lifetime the income of the property bequeathed, and after his death to distribute such property to the survivors of a class, and upon A's death the property is distributed to the taxpayer as the sole survivor, the basis of such property, in the hands of the taxpayer, is its fair market value at the time when the decedent died.

"The purpose of the Act, in prescribing a general uniform basis rule for property acquired by bequest, devise, or inheritance, is, on the one hand, to tax the gain, in respect of such property, to him who realizes it (without regard to the circumstance that at the death of the decedent it may have been quite uncertain whether the taxpayer would take or gain anything); and, on the other hand, not to recognize as gain any element of value solely from the circumstance that the possession or enjoyment of the taxpayer was postponed. Such postponement may be, for example, until the administration of the decedent's estate is completed, until the period of the possession or enjoyment of another has terminated, or until an uncertain event has happened. It is the increase or decrease in the value of property reflected in a sale or other disposition which section 113 (a) (5) recognizes as the measure of gain or loss.

"(2) *Special rule with respect to stock in a foreign personal holding company.*—In the case of decedents dying after August 26, 1937 the basis of stock of a foreign corporation acquired from the decedent by will or under the law governing descent and distribution of property of decedents, where such foreign corporation with respect to its taxable year next preceding the date of the decedent's death was a foreign personal holding company, is the fair market value of such stock at the time of such acquisition, i. e., the date of the decedent's death, or the basis in the hands of the decedent, whichever is lower."

The following is inserted immediately before article 113 (b)-1, relating to the general rule with respect to the adjusted basis:

"Section 203 of Title II of the Revenue Act of 1937, relating to foreign personal holding companies, provides:

"*Sec. 203. Adjusted Basis of Stock of Foreign Personal Holding Company.*

"Section 113 (b) (1) of the Revenue Act of 1936 is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following:

"and

""(E) to the extent provided in section 337 (f) in the case of the stock of United States shareholders in a foreign personal holding company.""

Article 113 (b)-1 is amended by adding after the third paragraph from the end thereof a new paragraph to provide:

"In the case of the stock of United States shareholders in a foreign personal holding company the cost or other basis must be adjusted also to the extent provided in section 337 (f)."

The following is inserted immediately before article 142-1, relating to fiduciary returns:

"Section 402 of Title IV of the Revenue Act of 1937, relating to fiduciary returns, provides:

"*Sec. 402. Fiduciary Returns.*

"Section 142 (a) of the Revenue Act of 1936 is amended to read as follows:

""(a) *Requirement of return.*—Every fiduciary (except a receiver appointed by authority of law in possession of

part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this title and such other information for the purpose of carrying out the provisions of this title as the Commissioner with the approval of the Secretary may by regulations prescribe—

""(1) Every individual having a net income for the taxable year of \$1,000 or over, if single, or if married and not living with husband or wife;

""(2) Every individual having a net income for the taxable year of \$2,500 or over, if married and living with husband or wife;

""(3) Every individual having a gross income for the taxable year of \$5,000 or over, regardless of the amount of his net income;

""(4) (A) Every estate, and every trust entitled to the personal exemption allowed by section 163 (a) (1), the net income of which for the taxable year is \$1,000 or over.

""(B) Every trust, not entitled to a personal exemption under section 163 (a) (1), which has a net income for the taxable year.

""(5) Every estate or trust the gross income of which for the taxable year is \$5,000 or over, regardless of the amount of the net income;

""(6) Every estate or trust of which any beneficiary is a nonresident alien; and

""(7) Regardless of the amount of the gross or net income, every trust, though having no net income, which would have a net income if distributions had not been made which under the terms of the trust instrument were in the discretion of the trustee or conditioned upon a contingency; but subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary, a fiduciary required by this paragraph to file a return may be exempted from the requirement of filing such return.""

"Section 403 of Title IV of the Revenue Act of 1937 provides:

"*Sec. 403. Effective Dates.*

"The amendments made by this title shall apply only with respect to taxable years beginning after December 31, 1936."

Article 142-1 is amended by inserting immediately after the first sentence thereof the following:

"In addition to the requirements stated in (a) and (b), every fiduciary, or at least one of joint fiduciaries, must, with respect to taxable years beginning after December 31, 1936, make a return of income for the trust for which he acts—

"(A) If the trust is not entitled to the personal exemption allowed by section 163 (a) (1), as amended by section 401 of the Revenue Act of 1937 (see article 163-1) and the trust has a net income for the taxable year; or

"(B) If (1) the trust has no net income and (2) under the terms of the trust instrument the income of the trust, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated or the distribution of the income is based upon a contingency, and (3) the net income of the trust computed without the allowance of a deduction for the amount of the income of the trust properly paid or credited during the taxable year to any legatee, heir, or beneficiary, is \$1,000 or more."

The following is substituted for the first three sentences of the next to the last paragraph of article 142-1:

"The return in case (a) shall be on Form 1040 or 1040A. In case (b) for taxable years beginning before January 1, 1937, a return is required on Form 1040 with respect to any taxable net income of the estate or trust computed in accordance with section 162 and a return on Form 1041

with respect to any income deducted under section 162 (b) or 162 (c). For such taxable years, if a portion of the income of the estate or trust is retained by the fiduciary and the remainder is distributable or distributed to beneficiaries, both Forms 1040 and 1041 will be required. For taxable years beginning after December 31, 1936, the return in case (a) shall be on Form 1040 or 1040A and in all other cases stated in this article on Form 1041."

Article 142-5, relating to returns for nonresident alien beneficiaries, is amended by substituting for the parenthetical reference at the end of paragraph (a) and the sentence immediately preceding such reference, the following:

"In such a case for taxable years beginning after December 31, 1936, the fiduciary shall make a return on Form 1041, as well as on Form 1040B. If there are two or more such nonresident alien beneficiaries, then for all taxable years the fiduciary shall render a return on Form 1041 and also a return on Form 1040B for each nonresident alien beneficiary. (See further article 217-1)."

Article 142-5 is further amended by substituting for paragraph (b) the following:

"(b) *No United States business or office.*—A citizen or resident fiduciary having the distribution of the income of an estate or trust will not be required to make a return on Form 1040NB for any beneficiary of the estate or trust who is a nonresident alien not engaged in trade or business within the United States and not having an office or place of business therein at any time within the taxable year if the entire amount of the tax on the income payable to such beneficiary has been withheld at the source (see sections 143 and 211 (a)). For taxable years beginning after December 31, 1936, a citizen or resident fiduciary having the distribution of the income of an estate or trust shall make a return on Form 1040NB if a beneficiary, other than a resident of Canada, has gross income for the taxable year of more than \$21,600 from the sources specified in section 211 (a), as amended, regardless of the amount of tax withheld at the source. If the beneficiary appoints a person in the United States to act as his agent for the purpose of rendering income tax returns, the fiduciary shall be relieved from the necessity of filing Form 1040NB in behalf of the beneficiary and from paying the tax. In such a case the fiduciary shall make a return on Form 1041 and attach thereto a copy of the notice of appointment. For the calendar year 1936 the fiduciary may either (1) make a return on Form 1042 of the tax at 10 percent on the entire amount of the income payable to the beneficiary, or (2) make a return on Form 1042 of the tax at 10 percent on the portion of the income not paid to the beneficiary before July 2, 1936, and a return on Form 1040NB for the beneficiary, including therein the income paid to him before July 2, 1936. Except for the calendar year 1936 the fiduciary shall make a return on Form 1042 of the tax at 10 percent on the entire amount of the income payable to the beneficiary, except that in the case of a beneficiary, resident of Canada, the rate shall be 5 percent. In addition to such return or returns, the fiduciary shall make a return on Form 1041 for the estate or trust, irrespective of the number of beneficiaries."

The following is inserted immediately before article 145-1, relating to penalties:

"Section 207 (e) of Title II of the Revenue Act of 1937, relating to foreign personal holding companies, provides:

["(Sec. 207. *Minor Amendments to Title I of 1936 Act.*)

"(e) Section 145 of such Act is amended by adding at the end thereof a new subsection to read as follows:

""(d) For penalties for failure to file information returns with respect to foreign personal holding companies and foreign corporations, see section 341.""

The following is inserted immediately after article 150-1, relating to license to collect foreign items:

"Section 207 (d) of Title II of the Revenue Act of 1937, relating to foreign personal holding companies, provides:

["(Sec. 207. *Minor Amendments to Title I of 1936 Act.*)

""(d) Such Act is amended by adding after section 150 a new section to read as follows:

""(Sec. 151. *Foreign Personal Holding Companies.*

""(For information returns by officers, directors, and large shareholders, with respect to foreign personal holding companies, see section 338, 339, and 341. For information returns by attorneys, accountants, and so forth, as to formation, and so forth, of foreign corporations, see sections 340 and 341.)"

The following is inserted immediately before article 163-1, relating to credits to an estate, trust, or beneficiary:

"Section 401 of Title IV of the Revenue Act of 1937 provides:

""(Sec. 401. *Denial of Personal Exemption to Trusts.*

""(Section 163 (a) of the Revenue Act of 1936 is amended to read as follows:

""(a) *Credits of estate or trust.*—

""(1) For the purpose of the normal tax and the surtax an estate or trust shall be allowed the same personal exemption as is allowed to a single person under section 25 (b) (1), except that no exemption shall be allowed a trust if the trust instrument requires or permits the accumulation of any portion of the income of the trust and there is not distributed an amount equal to the net income. For the purposes of this paragraph the term 'net income' does not include amounts included in gross income which, under the law of the jurisdiction under which the trust is administered, cannot (even if permitted or required by the trust instrument to be considered as income) be considered as income and are not distributable.

""(2) If no part of the income of the estate or trust is included in computing the net income of any legatee, heir, or beneficiary, then the estate or trust shall be allowed the same credits against net income for interest as are allowed by section 25 (a)."

Paragraph (a) of article 163-1 is amended to read as follows:

"(a) *Personal exemption of \$1,000.*—(1) An estate is allowed for both normal tax and surtax purposes the personal exemption of \$1,000 allowed a single person under section 25 (b) (1). A credit for dependents is not allowable to an estate or trust.

"(2) For taxable years beginning prior to January 1, 1937 a trust is allowed for both normal tax and surtax purposes the personal exemption of \$1,000 allowed a single person under section 25 (b) (1).

"(3) For taxable years beginning after December 31, 1936, a trust is allowed for both normal tax and surtax purposes the personal exemption of \$1,000 allowed a single person under section 25 (b) (1), except that such exemption shall not be allowed if the trust instrument requires or permits the accumulation of any portion of the income and the amount actually distributed during the taxable year is less than the net income of the trust. 'Net income' as used in this paragraph is to be computed in accordance with section 162, except that there shall be excluded any amounts included in gross income which (A) under the law of the jurisdiction controlling the administration of the trust cannot (even if permitted or required under the trust instrument to be considered as income) be considered as income and (B) are not distributable during the taxable year. Typical of such amounts is the profit arising from the sale of trust property which under the applicable State law is considered not as income but as a mere conversion of corpus and which under the terms of the trust instrument is not distributable during the taxable year."

Paragraph (b) of article 163-1 is amended by inserting after "(b)" the following:

"*Credit for interest to estate or trust.*—"

Paragraph (c) of article 163-1 is amended by inserting after "(c)" the following:

"*Credit for interest to beneficiary.*—"

The following is inserted immediately before article 211-1, relating to taxation of aliens in general:

"Section 501 of Title V of the Revenue Act of 1937, relating to nonresident alien individuals, provides:

"SEC. 501. Tax on Nonresident Alien Individuals.

"(a) Section 211 (a) of the Revenue Act of 1936 is amended by adding at the end thereof a new sentence to read as follows: "The tax imposed by this subsection shall not apply to any individual if the aggregate amount received during the taxable year from the sources above specified is more than \$21,600."

"(b) Section 211 of the Revenue Act of 1936 is further amended by adding at the end thereof a new subsection to read as follows:

"(c) No United States Business or Office and Gross Income of More than \$21,600.—A nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein who has a gross income for any taxable year of more than \$21,600 from the sources specified in subsection (a), shall be taxable without regard to the provisions of subsection (a), except that—

"(1) The gross income shall include only income from the sources specified in subsection (a); and

"(2) The deductions (other than the so-called 'charitable deduction' provided in section 213 (c)) shall be allowed only if and to the extent that they are properly allocable to the gross income from the sources specified in subsection (a); and

"(3) The aggregate of the normal and surtax under sections 11 and 12 shall, in no case, be less than 10 per centum of the gross income from the sources specified in subsection (a)."

"(c) The amendments made by subsection (a) and (b)—

"(1) Shall apply only to taxable years beginning after December 31, 1936; and

"(2) Shall not apply to a resident of a contiguous country so long as there is in effect a treaty with such country (ratified prior to the date of the enactment of this Act) under which rates of tax under section 211 (a), prior to its amendment by subsection (a), were reduced."

Article 211-7 is amended by changing the caption thereof to read as follows:

"Taxation of nonresident alien individuals for years beginning prior to January 1, 1937."

A new article is added after article 211-7, to read as follows:

"ART. 211-8. Taxation of nonresident alien individuals for years beginning after December 31, 1936.—For the purposes of this article and articles 212-1, 213-1, 214-1, and 217-2 nonresident alien individuals, for years beginning after December 31, 1936, are divided into three classes: (a) nonresident alien individuals not engaged in trade or business within the United States and not having an office or place of business therein at any time within the taxable year and deriving in the taxable year not more than \$21,600 gross amount of fixed or determinable annual or periodical income from sources within the United States, (b) nonresident alien individuals not engaged in trade or business within the United States and not having an office or place of business therein at any time during the taxable year and deriving in the taxable year more than \$21,600 gross amount of fixed or determinable annual or periodical income from sources within the United States, and (c) nonresident alien individuals who at any time within the taxable year are engaged in trade or business in the United States or have an office or place of business therein.

"A nonresident alien individual falling within (a) or (c) is taxable in the same manner as provided in paragraphs (a) and (b), respectively, of article 211-7.

"A nonresident alien individual falling within (b) is subject to tax only upon his fixed or determinable annual or

periodical income specified in section 211 (a) determined under the provisions of section 119, minus (1) the deductions properly allocable to such income and (2) the so-called 'charitable contribution' deduction provided in section 213 (c). Such nonresident alien is entitled to the credits against net income allowable to an individual by section 25, subject to the limitations provided in section 214. However, the tax thus computed under sections 11 and 12 shall in no such case be less than 10 percent of the gross amount of such fixed or determinable annual or periodical income from sources within the United States.

"Unless such nonresident alien individual shall file or cause to be filed with the collector a true and accurate return of his total fixed or determinable annual or periodical income from sources within the United States, the tax shall be collected on the basis of gross amount of such fixed or determinable annual or periodical income.

"Where such nonresident alien has various sources of fixed or determinable annual or periodical income from within the United States, as, for instance, from an estate or trust, from stocks or bonds held directly by him, and from securities held for him by a custodian resident in the United States, so that his total gross fixed or determinable annual or periodical income from United States sources is in excess of \$21,600 and a return of income was not filed by him or on his behalf, the Commissioner will cause a return of income to be made and include therein the fixed or determinable annual or periodical income from all sources within the United States concerning which he has information without allowance for deductions and credits, and will assess the tax and collect it from one or more of the sources of income of such nonresident alien within the United States.

"Such nonresident alien shall make or have made a full and accurate return on Form 1040NB (a) of all his fixed or determinable annual or periodical income from sources within the United States. As to what constitutes fixed or determinable annual or periodical income, see paragraph (a) of article 211-7.

"As to the duty of the representative or agent of such alien to file the return and pay the tax, see paragraph (b) of article 217-2.

"Nonresident alien individuals, residents of Canada, are not affected by the provisions of section 501, Title V of the Revenue Act of 1937 or of this Treasury Decision and are subject to tax under the provisions of the Revenue Act of 1936 as modified by the terms of the Tax Convention between the United States and Canada ratified August 13, 1937, effective January 1, 1938. For the taxation of nonresident alien individuals, residents of Canada, not engaged in trade or business within the United States and not having an office or place of business therein, see Treasury Decision 4766, approved October 7, 1937, Internal Revenue Bulletin XVI-42, 8 (1937)."

Paragraph (a) of articles 212-1, 213-1, 214-1, 217-2, and article 215-1 are amended by adding at the end thereof the following sentence:

"As to a nonresident alien individual who derives more than \$21,600 gross amount of fixed or determinable annual or periodical income from sources within the United States for any taxable year beginning after December 31, 1936, see article 211-8."

The first two sentences of article 219-1, relating to partnerships, are amended to read as follows:

"Whether a nonresident alien individual who is a member of a partnership is taxable under the provisions of (A) section 211 (a) or 211 (c) or (B) section 211 (b) may depend on the status of the partnership. A nonresident alien individual who is a member of a partnership which is not engaged in trade or business within the United States and has no office or place of business therein is subject to the provisions of section 211 (a) or 211 (c), as the case may be, depending on whether in the taxable year he derives

fixed or determinable annual or periodical income from sources within the United States of more than \$21,600, if he is not otherwise engaged in trade or business within the United States and has no office or place of business therein."

The following is substituted for the last sentence of the first paragraph of article 231-3, relating to gross income of foreign corporations:

"As to personal holding companies organized under the laws of foreign countries see article 351-3, as amended, of Chapter XXXV, as renumbered, and article 351-1 (1937) of Chapter XXXV (A). As to foreign personal holding companies see Chapter XXXIV."

The following is substituted for the last sentence of article 232-1, relating to deductions allowed foreign corporations:

"As to personal holding companies organized under the laws of foreign countries see article 351-3, as amended, of Chapter XXXV, as renumbered, and article 351-1 (1937) of Chapter XXXV (A). As to foreign personal holding companies see Chapter XXXIV."

The following is inserted immediately before article 275-1, relating to the period of limitation upon assessment of tax:

"Section 206 of Title II of the Revenue Act of 1937, relating to foreign personal holding companies, provides:

"*SEC. 206. Period of Limitation Upon Assessment and Collection.*

"(a) Section 275 of the Revenue Act of 1936 is amended by inserting after subsection (c) thereof a new subsection to read as follows:

"(d) Shareholders of Foreign Personal Holding Companies.—If the taxpayer omits from gross income an amount properly includable therein under section 337 (b) (relating to the inclusion in the gross income of United States shareholders of their distributive shares of the undistributed Supplement P net income of a foreign personal holding company) the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within seven years after the return was filed."

"(b) Subsection (d) of such section 275, before its amendment by subsection (a) of this section, is amended to read as follows:

"(e) For the purposes of subsections (a), (b), (c), and (d), a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

"(c) Subsection (e) of such section 275, before its amendment by subsections (a) and (b) of this section, is amended by striking out "(e)" and inserting in lieu thereof "(f)."'

Article 275-1 is amended by renumbering paragraphs (6), (7) and (8) as (7), (8) and (9) and by inserting immediately before such paragraphs a new paragraph numbered (6), to read as follows:

"(6) If the taxpayer omits from gross income an amount properly includable therein under section 337 (b) as his distributive share of the undistributed Supplement P net income of a foreign personal holding company, the tax may be assessed at any time within seven years after the return was filed."

Article 275-2, relating to the period of limitation upon the collection of tax, is amended by inserting after the paragraph numbered (3) a new paragraph numbered (4) to read as follows:

"(4) If the taxpayer omits from gross income an amount properly includable therein under section 337 (b) as his distributive share of the undistributed Supplement P net income of a foreign personal holding company, a proceeding in court

for the collection of the tax may be begun without assessment at any time within seven years after the return was filed."

A new chapter is added after Chapter XXXV, designated Chapter XXXV (A) and providing as follows:

"CHAPTER XXXV (A)

"SURTAX ON PERSONAL HOLDING COMPANIES

"(Under Title IA of the Revenue Act of 1936 as amended by section 1 of the Revenue Act of 1937)

"Title IA—Additional Income Taxes

"Section 3 of the Revenue Act of 1937 enacted August 26, 1937 provides in part:

"*SEC. 3 (Revenue Act of 1937.) Effective Dates.*

"The amendment made by section 1 [Revenue Act of 1937] shall apply only with respect to taxable years beginning after December 31, 1936; * * *."

[*Note.*—The provisions of this chapter apply only to taxable years beginning after December 31, 1936. For taxable years beginning prior to December 31, 1936 see Chapter XXXV.]

"Title I—Personal Holding Companies

"SEC. 1. Amendment of 1936 Act.

"Title IA of the Revenue Act of 1936 is amended to read as follows:

"Title IA—Additional Income Taxes

"SEC. 351. Surtax on Personal Holding Companies.

"There shall be levied, collected, and paid, for each taxable year (in addition to the taxes imposed by Title I), upon the undistributed adjusted net income of every personal holding company a surtax equal to the sum of the following:

"(1) 65 per centum of the amount thereof not in excess of \$2,000; plus

"(2) 75 per centum of the amount thereof in excess of \$2,000."

"ART. 351-1 (1937). Surtax on personal holding companies.—Section 351 of Title IA, as amended, imposes for each taxable year beginning after December 31, 1936 (in addition to the taxes imposed by Title I of the Revenue Act of 1936) a graduated income tax or surtax upon corporations classified as personal holding companies. Corporations so classified are exempt from the surtax on corporations improperly accumulating surplus imposed by section 102 of Title I of the Revenue Act of 1936, but are not exempt from the other taxes imposed by that title. Unlike the surtax imposed by section 102, the surtax imposed by section 351 of Title IA, as amended, applies to all personal holding companies defined as such in section 352 and article 352-1, regardless of whether or not they were formed or availed of to accumulate earnings or profits for the purpose of avoiding surtax upon shareholders. The surtax imposed by section 351 of Title IA, as amended, is 65 percent of the amount of the undistributed adjusted net income not in excess of \$2,000 and 75 percent of the amount of the undistributed adjusted net income in excess of \$2,000.

A foreign corporation, whether resident or nonresident, which is classified as a personal holding company under section 352 (not including, with respect to taxable years ending after August 26, 1937, a foreign personal holding company as defined in section 331) is subject to the tax imposed by section 351 of Title IA, as amended, with respect to its income from sources within the United States even though such income is not fixed or determinable annual or periodical income specified in section 231 (a). (See section 119.) The term 'personal holding company' as used in Title IA, as amended, does not include a foreign corporation if (1) its gross income from sources within the United States for the period specified in section 119 (a) (2) (B) is less than 50 percent of its total gross income from all sources and (2) all of its stock outstanding during the last half of the taxable year is owned by nonresident alien individuals, whether directly or indirectly through other foreign corporations.

"Sec. 352. Definition of Personal Holding Company."

"(a) *General rule.*—For the purposes of this title and of Title I the term "personal holding company" means any corporation if—

"(1) *Gross income requirement.*—At least 80 per centum of its gross income for the taxable year is personal holding company income as defined in section 353; but if the corporation is a personal holding company with respect to any taxable year, then, for each subsequent taxable year, the minimum percentage shall be 70 per centum in lieu of 80 per centum, until a taxable year during the whole of the last half of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 70 per centum of the gross income is personal holding company income; and

"(2) *Stock ownership requirement.*—At any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals.

"(b) *Exceptions.*—The term "personal holding company" does not include a corporation exempt from taxation under section 101, a bank as defined in section 104, a life insurance company, a surety company, or, except with respect to a taxable year ending on or before the date of the enactment of the Revenue Act of 1937, a foreign personal holding company as defined in section 331.

ART. 352-1. Definition of personal holding company.—A personal holding company is any corporation (other than a corporation specified in section 352 (b)) which for the taxable year meets (a) the gross income requirement specified in article 352-2, and (b) the stock ownership requirement specified in article 352-3. Both requirements must be satisfied and both must be met with respect to each taxable year.

ART. 352-2. Gross income requirement.—To meet the gross income requirement, it is necessary that either of the following percentages of gross income of the corporation for the taxable year be personal holding company income as defined in section 353:

"(a) 80 percent or more; or

"(b) 70 percent or more if the corporation has been classified as a personal holding company for any taxable year beginning after December 31, 1936, unless—

"(1) a taxable year has intervened since the last taxable year for which it was so classified, during no part of the last half of which the stock ownership requirement specified in section 352 (a) (2) exists; or

"(2) three consecutive years have intervened since the last taxable year for which it was so classified, during each of which its personal holding company income was less than 70 percent of its gross income.

In determining whether the personal holding company income is equal to the required percentage of the total gross income, the determination must not be made upon the basis of gross receipts, since gross income is not synonymous with gross receipts. For a further discussion of what constitutes "gross income", see section 22 (a) and the regulations prescribed under that section.

ART. 352-3. Stock ownership requirement.—To meet the stock ownership requirement, it is necessary that at some time during the last half of the taxable year more than 50 percent in value of the outstanding stock of the corporation be owned, directly or indirectly, by or for not more than five individuals. For such purpose, the ownership of the stock must be determined as provided in section 354 and articles 354 (a)-1 to 354 (a)-7 and article 354 (b)-1.

"In the event of any change in the stock outstanding during the last half of the taxable year, whether in the number of shares or classes of stock, or whether in the ownership thereof, the conditions existing immediately prior and subsequent to each change must be taken into consideration.

"In determining whether the statutory conditions with respect to stock ownership are present at any time during the last half of the taxable year, the phrase 'in value' shall,

in the light of all the circumstances, be deemed the value of the corporate stock outstanding at such time (not including treasury stock). This value may be determined upon the basis of the company's net worth, earning and dividend paying capacity, appreciation of assets, together with such other factors as have a bearing upon the value of the stock. If a value of stock is used which is greatly at variance with that reflected by the corporate books, the evidence upon which such valuation is based should be filed with the return. In any case where there are two or more classes of stock outstanding, the total value of all the stock should be allocated among the different classes according to the relative value of each class therein.

"The rules stated in the last two preceding paragraphs are equally applicable in determining the stock ownership requirement specified in section 353 (e), relating to personal service contracts and in section 353 (f), relating to the use of corporation property by a shareholder. The stock ownership requirement specified in these sections relates, however, to the stock outstanding at any time during the entire taxable year and not merely during the last half thereof.

"Sec. 353. Personal Holding Company Income."

"For the purposes of this title the term "personal holding company income" means the portion of the gross income which consists of:

"(a) *Dividends, interest, royalties (other than mineral, oil, or gas royalties), annuities.*

"(b) *Stock and securities, transactions.*—Except in the case of regular dealers in stock or securities, gains from the sale or exchange of stock or securities.

"(c) *Commodities transactions.*—Gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange. This subsection shall not apply to gains by a producer, processor, merchant, or handler of the commodity which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others.

"(d) *Estates and trusts.*—Amounts includable in computing the net income of the corporation under Supplement E of Title I; and gains from the sale or other disposition of any interest in an estate or trust.

"(e) *Personal service contracts.*—(1) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and (2) amounts received from the sale or other disposition of such a contract. This subsection shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

"(f) *Use of corporation property by shareholder.*—Amounts received as compensation (however designated and from whomsoever received) for the use of, or right to use, property of the corporation in any case where, at any time during the taxable year, 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement.

"(g) *Rents.*—Rents, unless constituting 50 per centum or more of the gross income. For the purposes of this subsection the term "rents" means compensation, however designated, for the use of, or right to use, property; but does not include amounts constituting personal holding company income under subsection (f).

"(h) *Mineral, oil, or gas royalties.*—Mineral, oil, or gas royalties, unless (1) constituting 50 per centum or more of

the gross income, and (2) the deductions allowable under section 23 (a) (relating to expenses) other than compensation for personal services rendered by shareholders, constitute 15 per centum or more of the gross income.'

"ART. 353-1. *Personal holding company income*.—The term 'personal holding company income' means the portion of the gross income which consists of the following:

"(1) *Dividends*.—The term 'dividends' means dividends as defined in section 115 (a), and includes amounts required to be included in gross income under section 337 (b). It does not include stock dividends (to the extent they do not constitute income to the shareholders within the meaning of the Sixteenth Amendment to the Constitution), liquidating dividends, or other capital distributions referred to in section 115 (c), as amended, and section 115 (d).

"(2) *Interest*.—The term 'interest' means any amounts, includable in gross income, received for the use of money loaned.

"(3) *Royalties (other than mineral, oil, or gas royalties)*.—The term 'royalties' includes amounts received for the privilege of using patents, copyrights, secret processes and formulas, good will, trade marks, trade brands, franchises, and other like property. It does not include rents, nor overriding royalties received by an operating company. As used in this paragraph the term 'overriding royalties' means amounts received from the sublessee by the operating company which originally leased and developed the natural resource property in respect of which such overriding royalties are paid.

"(4) *Annuities*.—The term 'annuities' refers only to annuities to the extent includable in the computation of gross income. (See section 22 (b) (2).)

"(5) *Gains from the sale or exchange of stock or securities*.—The term 'gains from the sale or exchange of stock or securities' as used in section 353 (b) and these regulations applies to all gains (including gains from liquidating dividends and other distributions from capital) from the sale or exchange of stock or securities includable in gross income. The term 'stock or securities' includes shares or certificates of stock, or interest in any corporation (including any joint-stock company, insurance company, association, or other organization classified as a corporation by the Act), certificates of interest or participation in any profit-sharing agreement, or in any oil, gas, or other mineral royalty, or lease, collateral trust certificates, voting trust certificates, stock rights or warrants, bonds, debentures, certificates of indebtedness, notes, car trust certificates, bills of exchange, obligations issued by or on behalf of a Government, State, Territory, or political subdivision thereof, etc. In the case of 'regular dealers in stock or securities' the term does not include gains derived from the sale or exchange of stock or securities made in the normal course of business. The term 'regular dealer in stock or securities' means corporations with an established place of business regularly engaged in the purchase of stock or securities and their resale to customers, but such corporations are not dealers with respect to stock or securities held for speculation or investment.

"(6) *Gains from futures transactions in commodities*.—Gains from futures transactions in commodities include gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange, but do not include gains from cash transactions or gains by a producer, processor, merchant, or handler of the commodity, which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others. In general, personal holding company income includes gains on futures contracts which are speculative. Futures contracts representing true hedges against price fluctuations in spot goods are not speculative transactions, though not concurrent with spot transactions. Futures contracts which are not hedges against spot transactions are speculative unless they are hedges against concurrent futures or forward sales or purchases.

"(7) *Income from estates and trusts*.—The income from estates and trusts which is to be included in personal holding company income consists of the income from estates and trusts which is required to be included in the gross income of a corporation under sections 161 to 169, together with the gains derived by the corporation from the sale or other disposition of any interest in an estate or trust.

"(8) *Amounts received under personal service contracts*.—Amounts includable in personal holding company income as amounts received under personal service contracts consist of amounts received pursuant to a contract under which the corporation is to furnish personal services, and amounts received from a sale or other disposition of such a contract, if—

"(a) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and

"(b) at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description), as the one to perform such services. For this purpose the stock ownership must be determined as provided in section 354 and articles 354 (a)-1 to 354 (a)-7, article 354 (b)-1 and the last paragraph of article 352-3.

The application of section 353 (e) may be illustrated by the following examples:

"Example (1).—A, whose profession is that of an actor, owns all of the outstanding capital stock of the M Corporation. The M Corporation entered into a contract with A under which A was to perform personal services for the person or persons whom the M Corporation might designate, in consideration of which A was to receive \$10,000 a year from the M Corporation. The M Corporation entered into a contract with the O Corporation in which A was designated to perform personal services for the O Corporation in consideration of which the O Corporation was to pay the M Corporation \$500,000 a year. The \$500,000 received by the M Corporation from the O Corporation constitutes personal holding company income.

"Example (2).—The N Corporation, the entire outstanding capital stock of which is owned by four individuals, is engaged in engineering. The N Corporation entered into a contract with the O Corporation to perform engineering services for the O Corporation, in consideration of which the O Corporation was to pay the N Corporation \$50,000. The individual who was to perform the services was not designated (by name or by description) in the contract and no one but the N Corporation had the right to designate (by name or by description) such individual. The \$50,000 received by the N Corporation from the O Corporation does not constitute personal holding company income.

"(9) *Compensation for use of property*.—The compensation for the use of, or the right to use, property of the corporation which is to be included in personal holding company income consists of amounts received as compensation (however designated and from whomsoever received) for the use of, or the right to use, property of the corporation in any case in which, at any time during the taxable year, 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual entitled to the use of the property, whether such right is obtained directly from the corporation or by means of a sublease or other arrangement. The property may consist of a yacht, a city residence, a country house, or any other kind of property. See section 354 and articles 354 (a)-1 to 354 (a)-7, article 354 (b)-1 and the last paragraph of article 352-3.

"(10) *Rents*.—The rents which are to be included in personal holding company income consists of compensation, however designated, including charter fees, etc., for the use of, or the right to use, real property, or any other kind of property, but do not include amounts constituting personal holding company income under section 353 (f) and paragraph (9) of this article. However, rents do not constitute

personal holding company income if constituting 50 percent or more of the gross income of the corporation.

"(11) *Mineral, oil, or gas royalties.*—The income from mineral, oil, or gas royalties is to be included as personal holding company income, unless (A) the aggregate amount of such royalties constitutes 50 percent or more of the gross income of the corporation for the taxable year and (B) the aggregate amount of deductions allowable for expenses under section 23 (a) (other than compensation for personal services rendered by the shareholders of the corporation) equals 15 percent or more of the gross income of the corporation for the taxable year.

"The term 'mineral, oil, or gas royalties' means all royalties, except overriding royalties, received from any interest in mineral, oil, or gas properties. The term 'mineral' includes the ores specified in paragraph (d) of article 23 (m)-1. As used in this paragraph the term 'overriding royalties' means amounts received from the sublessee by the operating company which originally leased and developed the natural resources property in respect of which such overriding royalties are paid.

"**Sec. 354. Stock Ownership.**

"(a) *Constructive ownership.*—For the purpose of determining whether a corporation is a personal holding company, insofar as such determination is based on stock ownership under section 352 (a) (2), section 353 (e), or section 353 (f)—

"(1) *Stock not owned by individual.*—Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

"(2) *Family and partnership ownership.*—An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of this paragraph the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

"(3) *Options.*—If any person has an option to acquire stock such stock shall be considered as owned by such person. For the purposes of this paragraph an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

"(4) *Application of family-partnership and option rules.*—Paragraphs (2) and (3) shall be applied—

"(A) For the purposes of the stock ownership requirement provided in section 352 (a) (2), if, but only if, the effect is to make the corporation a personal holding company;

"(B) For the purposes of section 353 (e) (relating to personal service contracts), or of section 353 (f) relating to the use of property by shareholders), if, but only if, the effect is to make the amounts therein referred to includable under such subsection as personal holding company income.

"(5) *Constructive ownership as actual ownership.*—Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for the purpose of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph

(2) shall not be treated as owned by him for the purpose of again applying such paragraph in order to make another the constructive owner of such stock.

"(6) *Option rule in lieu of family and partnership rule.*—If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3)."

"**ART. 354 (a)-1. Stock ownership.**—For the purpose of determining whether—

"(a) a corporation is a personal holding company, insofar as such determination is based on the stock ownership requirement specified in section 352 (a) (2) and article 352-3, or

"(b) amounts received under a personal service contract or from the sale of such a contract constitute personal holding company income insofar as such determination is based on the stock ownership requirement specified in section 353 (e) and paragraph (8) of article 353-1, or

"(c) compensation for the use of property constitutes personal holding company income insofar as such determination is based on the stock ownership requirement specified in section 353 (f) and paragraph (9) of Article 351-1,

stock owned by an individual includes stock constructively owned by him as provided in section 354. For such purpose constructive ownership of stock shall be determined and applied in accordance with the rules provided in section 354 and articles 354 (a)-2 to 354 (a)-7 and article 354 (b)-1. All forms and classes of stock, however denominated, which represent the interests of shareholders, members, or beneficiaries in the corporation shall be taken into consideration.

"**Art. 354 (a)-2. Stock not owned by individual.**—In determining the ownership of stock for any of the purposes set forth in article 354 (a)-1, stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. For example, if A and B, two individuals, are the exclusive and equal beneficiaries of a trust or estate, and if such trust or estate owns the entire capital stock of the M Corporation, and if the M Corporation in turn owns the entire capital stock of the N Corporation, then the stock of both the M Corporation and the N Corporation shall be considered as being owned equally by A and B as the individuals owning the beneficial interest therein. See also article 354 (a)-6.

"**Art. 354 (a)-3. Family and partnership ownership.**—In determining the ownership of stock for any of the purposes set forth in article 354 (a)-1, an individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of such determination the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

"The application of the family and partnership rule in determining the ownership of stock for the purpose set forth in (a) of article 354 (a)-1 is illustrated by the following example:

"**Example.**—The M Corporation at some time during the last half of the taxable year had 1,800 shares of outstanding stock, 450 of which were held by various individuals having no relationship to one another and none of whom were partners, and the remaining 1,350 were held by 51 shareholders as follows:

Relationships	Shares	Shares	Shares	Shares	Shares
An individual					
His father	100	B	20	C	20
His wife	10	BF	10	CF	10
His brother	10	BW	40	CW	40
His son	10	BB	10	CB	10
His daughter by former marriage (son's half-sister)	10	BS	40	CS	40
His brother's wife	10	BSHS	40	CSHS	40
His wife's father	10	BBW	10	CBW	10
His wife's brother	10	BWF	10	CWF	110
His wife's brother's wife	10	BWB	10	CWB	10
Individual's partner	10	BWBW	10	CWBW	10
	AP	10		DWBW	10
				EWBW	110

By applying the statutory rule provided in section 354 (a) (2) five individuals own more than 50 percent of the outstanding stock as follows:

A (including AP, AW, AB, AS, ASHS, AP)	160
B (including BF, BW, BB, BS, BSBS)	160
CW (including C, CS, CWF, CWB)	220
DB (including D, DP, DBW)	200
EWB (including EW, EWF, EWBW)	170
Total, or more than 50 percent	910

Individual A represents the obvious case where the head of the family owns the bulk of the family stock and naturally is the head of the group. A's partner owns 10 shares of the stock. Individual B represents the case where he is still head of the group because of the ownership of stock by his immediate family. Individuals C and D represent cases where the individuals fall in groups headed in C's case by his wife and in D's case by his brother because of the preponderance of holdings on the part of relatives by marriage. Individual E represents the case where the preponderant holdings of others eliminate that individual from the group.

"The method of applying the family and partnership rule as illustrated in the foregoing example also applies in determining the ownership of stock for the purposes stated in (b) and (c) of article 354 (a)-1.

"ART. 354 (a)-4. *Options.*—In determining the ownership of stock for any of the purposes set forth in article 354 (a)-1, if any person has an option to acquire stock, such stock may be considered as owned by such person. The term 'option' as used in this article includes an option to acquire such an option and each one of a series of such options, so that the person who has an option on an option to acquire stock may be considered as the owner of the stock.

"ART. 354 (a)-5. *Application of family-partnership and option rules.*—The family and partnership rule provided in section 354 (a) (2) and article 354 (a)-3 and the option rule provided in section 354 (a) (3) and article 354 (a)-4 shall be applied—

"(a) for the purpose stated in (a) of article 354 (a)-1, if, but only if, the effect of such application is to make the corporation a personal holding company, or

"(b) for the purpose stated in (b) of article 354 (a)-1, if, but only if, the effect of such application is to make the amounts received under a personal service contract or from the sale of such a contract personal holding company income, or

"(c) for the purpose stated in (c) of article 354 (a)-1, if, but only if, the effect of such application is to make the compensation for the use of property personal holding company income.

The family and partnership rule and the option rule must be applied independently for each of the purposes stated in article 354 (a)-1.

"ART. 354 (a)-6. *Constructive ownership as actual ownership.*—In determining the ownership of stock for any of the purposes set forth in article 354 (a)-1—

"(a) stock constructively owned by a person by reason of the application of the rule provided in section 354 (a) (1), relating to stock not owned by an individual (see article 354 (a)-2) shall be considered as actually owned by such person for the purpose of again applying such rule or of applying the family and partnership rule provided in section 354 (a) (2) (see article 354 (a)-3) in order to make another person the constructive owner of such stock, and

"(b) stock constructively owned by a person by reason of the application of the option rule provided in section 354 (a) (3) (see article 354 (a)-4) shall be considered as actually owned by such person for the purpose of applying either the rule provided in section 354 (a) (1), relating to stock not owned by an individual, or the family and partnership rule provided in section 354 (a) (2) in order to make another person the constructive owner of such stock, but

"(c) stock constructively owned by an individual by reason of the application of the family and partnership

rule provided in section 354 (a) (2) shall not be considered as actually owned by such individual for the purpose of again applying such rule in order to make another individual the constructive owner of such stock.

"The application of this article may be illustrated by the following examples:

"Example (1).—A's wife, AW, owns all of the stock of the M Corporation, which in turn owns all the stock of the O Corporation. The O Corporation in turn owns all the stock in the P Corporation.

"Under the rule provided in section 354 (a) (1), relating to stock not owned by an individual, the stock in the P Corporation owned by the O Corporation is considered to be owned constructively by the M Corporation, the sole shareholder of the O Corporation. Such constructive ownership of the stock of the M Corporation is considered as actual ownership for the purpose of again applying such rule in order to make AW, the sole shareholder of the M Corporation, the constructive owner of the stock of the P Corporation. Similarly, the constructive ownership of the stock by AW is considered as actual ownership for the purpose of applying the family and partnership rule provided in section 354 (a) (2) in order to make A the constructive owner of the stock of the P Corporation, if such application is necessary for any of the purposes set forth in article 354 (a)-1. But the stock thus constructively owned by A may not be considered as actual ownership for the purpose of again applying the family and partnership rule in order to make another member of A's family, for example A's father, the constructive owner of the stock of the P Corporation.

"Example (2).—B, an individual, owns all the stock of the R Corporation which has an option to acquire all the stock of the S Corporation, owned by C, an individual, who is not related to B.

"Under the option rule provided in section 354 (a) (3) the R Corporation may be considered as owning constructively the stock of the S Corporation owned by C. Such constructive ownership of the stock by the R Corporation is considered as actual ownership for the purpose of applying the rule provided in section 354 (a) (1), relating to stock not owned by an individual, in order to make B, the sole shareholder of the R Corporation, the constructive owner of the stock of the S Corporation. The stock thus constructively owned by B by reason of the application of the rule provided in section 354 (a) (1) likewise is considered as actual ownership for the purpose, if necessary, of applying the family and partnership rule provided in section 354 (a) (2), in order to make another member of B's family, for example, B's wife, BW, the constructive owner of the stock of the S Corporation. However, the family and partnership rule could not again be applied so as to make still another individual the constructive owner of the stock of the S Corporation, that is, the stock constructively owned by BW could not be considered as actually owned by her in order to make BW's father the constructive owner of such stock by a second application of the family and partnership rule.

"ART. 354 (a) 7. *Option rule in lieu of family and partnership rule.*—If, in determining the ownership of stock for any of the purposes set forth in article 354 (a)-1, stock may be considered as constructively owned by an individual by an application of both the family-partnership rule provided in section 354 (a) (2) (see article 354 (a)-3) and the option rule provided in section 354 (a) (3) (see article 354 (a)-4) such stock shall be considered as owned constructively by the individual by reason of the application of the option rule.

"The application of this article may be illustrated by the following example:

"Example.—Two brothers, A and B, each own 10 percent of the stock of the M Corporation, and A's wife, AW, also owns 10 percent of the stock of such corporation. AW's husband, A, has an option to acquire the stock owned by her at any time. It becomes necessary, for one of the purposes stated in article 354 (a)-1, to determine the stock ownership of B in the M Corporation.

"If the family and partnership rule were the only rule that applied in the case, B would be considered, under that rule, as owning 20 percent of the stock of the M Corporation, namely, his own stock plus the stock owned by his brother. In that event, B could not be considered as owning the stock held by AW since (1) AW is not a member of B's family and (2) the constructive ownership of such stock by A through the application of the family and partnership rule in his case is not considered as actual ownership so as to make B the constructive owner by a second application of the same rule with respect to the ownership of the stock. (See article 354 (a)-6.)

"However, there is more than the family and partnership rule involved in this example. As the holder of an option upon the stock, A may be considered the constructive owner of his wife's stock by the application of the option rule and without reference to the family relationship between A and AW. If A is considered as owning the stock of his wife by application of the option rule, then under article 354 (a)-6, such constructive ownership by A is regarded as actual ownership for the purpose of applying the family and partnership rule so as to make another member of A's family, for example, B, the constructive owner of the stock. Hence, since A may be considered as owning his wife's stock by applying both the family-partnership rule and the option rule, the provisions of section 354 (a) (6) apply and accordingly A must be considered the constructive owner of his wife's stock under the option rule rather than the family-partnership rule. B thus becomes the constructive owner of 30 percent of the stock of the M Corporation, namely, his own 10 percent, A's 10 percent, and AW's 10 percent constructively owned by A as the holder of an option on the stock.

"**[SEC. 354. Stock Ownership.]**

"(b) **Convertible Securities.**—Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

"(1) For the purpose of the stock ownership requirement provided in section 352 (a) (2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

"(2) For the purpose of section 353 (e) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includable under such subsection as personal holding company income; and

"(3) For the purpose of section 353 (f) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includable under such subsection as personal holding company income.

"The requirement in paragraphs (1), (2), and (3) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included."

"**Art. 354 (b)-1. Convertible securities.**—Under section 354 (b), outstanding securities of a corporation, such as bonds, debentures or other corporate obligations, convertible into stock of the corporation (whether or not convertible during the taxable year) shall be considered as outstanding stock of the corporation for the purpose of the stock ownership requirement provided in section 352 (a) (2), but only if the effect of such consideration is to make the corporation a personal holding company. Such convertible securities shall be considered as outstanding stock for the purpose of section 353 (e), relating to amounts received under personal service contracts, or of section 353 (f), relating to compensation for the use of property, but only if the effect of such consideration is to make the amounts therein referred to includable

under such sections as personal holding company income. The consideration of convertible securities as outstanding stock is subject to the exception that, if some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be considered as outstanding stock although the others are not so considered, but no convertible securities shall be considered as outstanding stock unless all outstanding securities having a prior conversion date are also so considered. For example, if outstanding securities are convertible in 1937, 1938, and 1939, those convertible in 1937 can be properly considered as outstanding stock without so considering those convertible in 1938 or 1939, and those convertible in 1937 and 1938 can be properly considered as outstanding stock without so considering those convertible in 1939. However, the securities convertible in 1938 could not be properly considered as outstanding stock without so considering those convertible in 1937 and the securities convertible in 1939 could not be properly considered as outstanding stock without so considering those convertible in 1937 and 1938.

"**SEC. 355. Undistributed adjusted net income.**

"For the purposes of this title the term "undistributed adjusted net income" means the adjusted net income (as defined in section 356) minus—

"(a) The amount of the dividends paid credit provided in section 27, computed without the benefit of subsection (b) thereof (relating to the dividend carry-over); and

"(b) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness."

"**ART. 355-1. Undistributed adjusted net income.**—The term "undistributed adjusted net income" means the adjusted net income (as defined in section 356 and article 355-1) minus (A) the amount of dividends paid credit provided in section 27, computed without the benefit of section 27 (b) (relating to the dividend carry-over) and (B) amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and the terms of such indebtedness (see article 355-2).

"**ART. 355-2. Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934.**—

"(a) **Indebtedness.**—The term "indebtedness" means an obligation, absolute and not contingent, to pay, on demand or within a given time, in cash or other medium, a fixed amount. The term "indebtedness" does not include the obligation of a corporation on its capital stock.

"The indebtedness must have been incurred (or, if incurred by assumption, assumed) by the taxpayer prior to January 1, 1934. An indebtedness evidenced by bonds, notes or other obligations issued by a corporation is ordinarily incurred as of the date such obligations are issued and the amount of such indebtedness is the amount represented by the face value of the obligations. In the case of renewal or other changes in the form of an indebtedness, so long as the relationship of debtor and creditor continues between the taxpayer and his creditor, the giving of a new promise to pay by the taxpayer will not have the effect of changing the date the indebtedness was incurred.

"(b) **Amounts used or irrevocably set aside.**—The deduction is allowable, in any taxable year, only for amounts used or irrevocably set aside in that year. The use or irrevocable setting aside must be to effect the extinguishment or discharge of indebtedness. Since, therefore, in the case of renewal and other changes in the form of an indebtedness, the relationship of debtor and creditor continues between the taxpayer and his creditor, the mere giving of a new promise to pay by the taxpayer will not result in an allowable deduction. If amounts are set aside in one year, no deduction is allowable for such amounts for a later year in which actually paid. As long as all other conditions are satisfied, the aggregate amount allowable as a deduction for any

taxable year includes all amounts (from whatever source) used and, as well, all amounts (from whatever source) *irrevocably* set aside, irrespective of whether in cash or other medium. Double deductions are not permitted.

"(c) Reasonableness of the amounts with reference to the size and terms of the indebtedness.—The reasonableness of the amounts used or *irrevocably* set aside must be determined by reference to the size and terms of the particular indebtedness. Hence, all the facts and circumstances with respect to the nature, scope, conditions, amount, maturity, and other terms of the particular indebtedness must be shown in each case.

"Ordinarily an amount used to pay or retire an indebtedness, in whole or in part, at or prior to the maturity and in accordance with the terms thereof will be considered reasonable, and may be allowable as a deduction for the year in which so used, if no adjustment is required by reason of an amount set aside in a prior year for payment or retirement of the same indebtedness.

"All amounts *irrevocably* set aside for the payment or retirement of an indebtedness in accordance with and pursuant to the terms of the obligation, for example, the annual contribution to trustees required by a mandatory sinking fund, will be considered as complying with the statutory requirement of reasonableness. To be considered reasonable it is not necessary that the plan of retirement provide for a retroactive setting aside of amounts for years prior to that in which the plan is adopted. However, if a voluntary plan was adopted prior to 1934, no adjustment is allowable in respect of the amounts set aside in the years prior to 1934.

"(d) General.—The burden of proof will rest upon the taxpayer to sustain the deduction claimed. Therefore, the taxpayer must furnish the information required by the return, and such other information as the Commissioner may require in substantiation of the deduction claimed.

"*Sec. 356. Adjusted Net Income.*

"For the purposes of this title the term "adjusted net income" means the net income with the following adjustments:

"(a) *Additional deductions.*—There shall be allowed as deductions—

"(1) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction under section 23; but not including the tax imposed by section 102, section 351 (either before or after its amendment by the Revenue Act of 1937), or a section of a prior income-tax law corresponding to either of such sections.

"(2) In lieu of the deduction allowed by section 23 (q), contributions or gifts made within the taxable year to or for the use of donees described in section 23 (q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the taxpayer's net income, computed without the benefit of this paragraph and section 23 (q), and without the deduction of the amount disallowed under subsection (b) of this section.

"(3) In the case of a corporation organized prior to January 1, 1936, to take over the assets and liabilities of the estate of a decedent, amounts paid in liquidation of any liability of the corporation based on the liability of the decedent to make contributions or gifts to or for the use of donees described in section 23 (q) for the purposes therein specified, to the extent such liability of the decedent existed prior to January 1, 1934. No deduction shall be allowed under paragraph (2) of this subsection for a taxable year for which a deduction is allowed under this paragraph.

"(b) *Deductions not allowed.*—The aggregate of the deductions allowed under section 23 (a), relating to expenses, and section 23 (1), relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the corporation, shall be allowed only in an amount equal to the rent or other compensation received for the use or right to use the property, unless it is established (under regulations prescribed by the Commissioner with the

approval of the Secretary) to the satisfaction of the Commissioner:

"(1) That the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

"(2) That the property was held in the course of a business carried on bona fide for profit; and

"(3) Either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business."

"*ART. 356-1. Adjusted net income.*—The term 'adjusted net income' as used in Title IA, as amended, means, in the case of a domestic corporation, the gross income as defined in section 22 less the deductions provided in section 23 subject to the qualifications, limitations and exceptions provided in section 356. In the case of a foreign corporation, whether resident or nonresident, which files or causes a return to be filed, the 'readjusted net income' means the net income from sources within the United States (gross income from sources within the United States as defined in section 119 and the regulations thereunder less statutory deductions) subject to the qualifications, limitations and exceptions provided in section 356. In the case of a foreign corporation, whether resident or nonresident, which files no return the 'adjusted net income' means the gross income from sources within the United States as defined in section 119 and the regulations thereunder less the deductions enumerated in section 356 (a) but without the benefit of any deductions under Title I of the Revenue Act of 1936 (see section 233).

"The 'adjusted net income' includes interest upon obligations of the United States and obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States, except as provided in section 22 (b) (4). The 'adjusted net income' does not include interest on obligations of States or Territories of the United States or any political subdivision thereof or of the District of Columbia or of the possessions of the United States.

"The foreign tax credit permitted by section 131 with respect to the taxes imposed by Title I of the Revenue Act of 1936 is not allowed with respect to the surtax imposed by section 351. However, the deduction of foreign taxes under section 23 (c) is permitted for the purposes of the surtax even if for the purposes of the corporate tax imposed by Title I of that Act a credit for such taxes is taken.

"In addition to the qualifications, limitations, and exceptions provided in section 356 (a), under section 356 (b) the aggregate of the deductions allowed under section 23 (a), relating to expenses, and section 23 (1), relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the company shall be allowed only in an amount equal to the rent or other compensation received for the use of, or right to use, the property, unless it is established to the satisfaction of the Commissioner:

"(1) That the rent or other compensation received was the highest obtainable, or if none was received, that none was obtainable;

"(2) That the property was held in the course of a business carried on bona fide for profit; and

"(3) Either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

"The burden of proof will rest upon the taxpayer to sustain the deduction claimed. If, in computing its adjusted net income, a personal holding company claims deductions for expenses and depreciation allocable to the operation and maintenance of property owned or operated by the company, in an aggregate amount in excess of the rent or other compensation received for the use of, or the right to use, the property, it shall attach to its income tax return a statement setting forth its claim for allowance of the additional deductions together with a complete statement of the facts, cir-

cumstances and arguments on which it relies in support of its claim. Such statement shall set forth:

- "(a) A description of the property;
- "(b) The cost or other basis to the corporation and the nature and value of the consideration paid for the property;
- "(c) The name and address of the person from whom acquired and the date thereof;
- "(d) The name and address of the person to whom leased or rented, or the person permitted to use the property, and the number of shares of stock, if any, held by such person and the members of his family;
- "(e) The nature and gross amount of the rent or other compensation received for the use of, or the right to use, the property during the taxable year and for each of the five preceding years and the amount of the expenses incurred with respect to, and the depreciation sustained on, the property for such years;

"(f) Evidence that the rent or other compensation was the highest obtainable and, if none was received, a statement of the reasons therefor;

- "(g) A copy of the contract, lease or rental agreement;
- "(h) The purpose for which the property was used;
- "(i) The business carried on by the corporation with respect to which the property was held and the gross income, expenses and net income derived from the conduct of such business for the taxable year and for each of the five preceding years;

"(j) A statement of any reasons which existed for expectation that the operation of the property would be profitable, or a statement of the necessity for the use of the property in the business of the corporation, and the reasons why the property was acquired; and

- "(k) Any other information on which the taxpayer relies.

"ART. 356-2. Illustration of computation of adjusted net income, undistributed adjusted net income, and surtax.—The method of computation of the adjusted net income, the undistributed adjusted net income, and the surtax under Title IA, as amended, may be illustrated as follows:

"The following facts exist with respect to the O Corporation, a personal holding company, for the calendar year 1937:

"The net income, as computed under Title I of the Act amounts to \$190,000.

"Federal income tax aggregates \$17,500. This amount includes the surtax under section 14 but does not include excess-profits tax imposed by section 106 of the Revenue Act of 1935, surtax imposed by section 102 of the Revenue Act of 1936, or section 351 of the latter Act either before or after its amendment by the Revenue Act of 1937, or a section of a prior income-tax law corresponding to either of such sections 102 or 351.

"Contributions or gifts made to or for the use of donees described in section 23 (q) for the purposes therein specified amount to \$35,000, of which \$10,000 is deducted in arriving at the net income under Title I of the Revenue Act of 1936.

"Rent in the amount of \$10,000 was received from the principal shareholder of the corporation for the use of a country estate which had been previously acquired from such shareholder in exchange for its capital stock. The expenses of the corporation allocable to the maintenance and operation of the country estate amount to \$30,000. The yearly depreciation on the depreciable property of the estate amounts to \$5,000. The corporation has not established its right to claim the entire amount of the expenses and depreciation applicable to the estate as provided in section 356 (b) and article 356-1.

"Dividends paid by the corporation to its shareholders during the taxable year which are allowable as a credit under section 27 amount to \$40,000.

"The amount used during the year to pay indebtedness incurred by the corporation prior to January 1, 1934, is \$31,750.

"The adjusted net income, the undistributed adjusted net income, and the surtax are computed as follows:

Net income under Title I of the Revenue Act of 1936..... \$190,000

Add: Contributions deductible in computing net income under section 21..... 10,000
Aggregate of expenses and depreciation relating to the country estate in excess of the income derived therefrom..... 25,000

Net income computed without the benefit of a deduction for contributions and without the benefit of the amount disallowed under section 356 (b)..... 225,000

Less: Federal income taxes..... \$17,500
Contributions deductible under section 356 (a) (2) (15 percent of \$225,000)..... 33,750
..... 51,250

Adjusted net income..... 173,750

Less: Dividends paid credit..... 40,000
Amount used to pay indebtedness..... 31,750
..... 71,750

Undistributed adjusted net income..... 102,000
Amount taxable at 65 percent (not in excess of \$2,000)..... 2,000
Amount taxable at 75 percent (\$102,000 minus \$2,000)..... 100,000
Surtax on \$2,000 at 65 percent..... 1,300
Surtax on \$100,000 at 75 percent..... 75,000

Total surtax..... 76,300

"SEC. 357. Meaning of Terms Used.

"The terms used in this title shall have the same meaning as when used in Title I.

"SEC. 358. Administrative Provisions.

"All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act, shall insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title, except that the provisions of section 131 of that title shall not be applicable."

"ART. 358-1. Return and payment of tax.—A separate return is required for the surtax imposed under section 351 of Title IA, as amended. Such returns shall be made on Form 1120H. In the case of a personal holding company which is a domestic corporation, the return is required to be made within the time provided by section 53 and in the case of a foreign corporation within the time provided in section 235. The tax shown by the corporation on its return must be paid in the case of a domestic corporation within the time provided in section 56 and in the case of a foreign corporation within the time provided in section 236. The same provisions of law relating to the period of limitations for assessment and collection which govern the taxes imposed by Title I of the Revenue Act of 1936 also apply to the surtax imposed under Title IA, as amended. However, since the surtax imposed under Title IA, as amended, is a distinct and separate tax from those imposed under Title I of the Revenue Act of 1936, the making of a return under Title I of that Act will not start the period of limitations for assessment of the surtax imposed under Title IA, as amended. If the corporation subject to section 351 of Title IA, as amended, fails to file a return the tax may be assessed at any time. If the Commissioner finds a deficiency in respect of the tax imposed by section 351 of Title IA, as amended, he is required to follow the same procedure which applies to deficiencies in income tax under Title I of the Revenue Act of 1936. The penalties applicable to the income taxes imposed under Title I of the Revenue Act of 1936, as well as the provisions of Title I of that Act relating to interest and additions to the tax, also apply to the surtax imposed by section 351 of Title IA, as amended. The administrative provisions applicable to the surtax imposed by section 351 of Title IA, as amended, are not confined to those contained in Title I of the Revenue Act of 1936 but embrace all administrative provisions of law which have any application to income taxes.

"ART. 358-2. Determination of tax, assessment, collection.—The determination, assessment and collection of the tax imposed by section 351 of Title IA, as amended, and the exami-

nation of returns and claims in connection therewith, will be made under such procedure as may be prescribed from time to time by the Commissioner.

"SEC. 359. *Improper Accumulation of Surplus.*

"For surtax on corporations which accumulate surplus to avoid surtax on stockholders, see section 102.

"SEC. 360. *Foreign Personal Holding Companies.*

"For provisions relating to foreign personal holding companies and their shareholders, see Supplement P of Title I."

[SEAL]

CHAS. T. RUSSELL,

Acting Commissioner of Internal Revenue.

Approved: January 14, 1938.

ROSWELL MAGILL,

Acting Secretary of the Treasury.

[F. R. Doc. 38-179; Filed, January 18, 1938; 11:34 a. m.]

DEPARTMENT OF THE INTERIOR.

National Bituminous Coal Commission.

[Order No. 183]

AN ORDER MODIFYING ORDER NO. 90, AS MODIFIED BY ORDERS NOS. 138, 149 AND 160, AND SUPPLEMENTING THE SCHEDULE OF MINIMUM PRICES FOR COALS OF CODE MEMBERS PRODUCED WITHIN DISTRICT NO. 2, BY ADDING THERETO A SUPPLEMENTAL SCHEDULE OF PRICES, TO BE KNOWN AS "SUPPLEMENT NO. 4 TO PRICE SCHEDULE NO. 1—DISTRICT NO. 2"

[Order No. 183 (F. R. Doc. 38-135; Filed, January 14, 1938; 12:03 p. m.) appears in the issue for Saturday, January 15, 1938, at 3 F. R. 100. The following supplemental schedule of prices has been filed with the Division of the Federal Register, The National Archives, as a part of Order No. 183.]

SUPPLEMENT NO. 4 TO PRICE SCHEDULE NO. 1 FOR DISTRICT NO. 2

To all Code Members within District No. 2:

Effective January 24, 1938, the following changes in Price Schedule No. 1 and Supplement No. 1 thereto,¹ shall be made:

The following mines shall be indexed "F" instead of "E" for Size Group 9:

Abruzzi Coal Company, Abruzzi Mine.
Abruzzi Coal Company, Winsted Mine.
Ainsley Coal Company, Geneva Mine.
Crawford C & C Co., Donald #2 Mine.
Davidson-Conn'yl. C & C Co., Frederick #1 Mine.
Fancy Hill Coal Company—Eagle Mine.
Gould, Kenneth, Gould Mine.
McManis & Sons Coal Co., Powell Mine.
Martin Mining Company, Martin Mine.
Mapel-Sterling Coal Company, Mapel St. #2 Mine.
Old Home Fuel Co., Griffin No. 1 Mine.
Poland Coal Company, Poland #3 Mine.
Reliance C. Mining Company, Crystal Mine.
South Fayette Coal Company, Melrose Mine.
West Point Marion C. Co., Walnut Hill Mine.

McKeesport Coal & Coke Co., Hubbard Mine, shall be indexed "D" instead of "C" for Group 9.

Union Collieries Co., Renton #3 Mine shall be indexed "C" for washed or mechanically cleaned coal in Size Group 9, and indexed "D" instead of "C" for Raw coal in Size Group 9.

Hillman Coal & Coke Company, Naomi Mine Raw Coal shall be price indexed as follows:

SIZE GROUPS

1	2	3	4	5	6	7	9	12	13	14
C	B	B	B	C	O	O	D	C	O	C

¹ 2 F. R. 3010, 3272 (DI).

W. J. Rainey, Inc., Clyde #1, 2 and 3 Mines, shall be price indexed as follows:

SIZE GROUPS

	1	2	3	4	5	6	7	9	12	13	14
Clyde #1	C	B	B	B	C	O	C	D	C	C	C
Clyde #2	C	B	B	B	C	O	C	D	C	C	C
Clyde #3 "R"	C	B	B	B	C	O	O	D	C	C	C
Clyde #3 "W"	C	B	B	B	C	O	B				B

By order of the Commission.

Dated this 12th day of January, 1938.

F. W. McCULLOUGH, Secretary.

F.R. Doc. 38-135

[Order No. 184]

AN ORDER MODIFYING ORDER NO. 96, AS MODIFIED BY ORDERS NOS. 132 AND 164, AND SUPPLEMENTING THE SCHEDULE OF MINIMUM PRICES FOR COALS OF CODE MEMBERS PRODUCED WITHIN DISTRICT NO. 8, BY ADDING THERETO A SUPPLEMENTAL SCHEDULE OF PRICES, TO BE KNOWN AS "SUPPLEMENT NO. 3 TO PRICE SCHEDULE NO. 1—DISTRICT NO. 8"

[Order No. 184 (F. R. Doc. 38-136; Filed, January 14, 1938; 12:03 p. m.) appears in the issue for Saturday, January 15, 1938, at 3 F. R. 101. The following supplemental schedule of prices has been filed with the Division of the Federal Register, The National Archives, as a part of Order No. 184.]

SUPPLEMENT NO. 3 TO PRICE SCHEDULE NO. 1 FOR DISTRICT NO. 8
To all Code Members within District No. 8:

Effective January 24, 1938, the following change and addition shall be made in Supplement No. 1 to Price Schedule No. 1:²

Octavia Coal Mining Corporation, Octavia Mine, Pond Creek Seam (Top Stratta) shall be indexed "P" instead of "N" for size group 4 and indexed "H" instead of "F" for size group 12.

The following shall be added:

Item "3A Savannah, Georgia. The minimum price for Bunker fuel f. o. b. cars at piers shall be \$5.30 per gross ton when delivered to vessels destined to points beyond the harbor limits of Savannah, Georgia."

By order of the Commission.

Dated this 12th day of January, 1938.

F. W. McCULLOUGH, Secretary.

38-136

[Order No. 185]

AN ORDER MODIFYING ORDER NO. 99, AS MODIFIED BY ORDERS NOS. 137 AND 154, AND SUPPLEMENTING THE SCHEDULE OF MINIMUM PRICES FOR COALS OF CODE MEMBERS PRODUCED WITHIN DISTRICT NO. 11, BY ADDING THERETO A SUPPLEMENTAL SCHEDULE OF PRICES, TO BE KNOWN AS "SUPPLEMENT NO. 3 TO PRICE SCHEDULE NO. 1—DISTRICT NO. 11"

[Order No. 185 (F. R. Doc. 38-137; Filed, January 14, 1938; 12:03 p. m.) appears in the issue for Saturday, January 15, 1938, at 3 F. R. 101. The following supplemental schedule of prices has been filed with the Division of the Federal Register, The National Archives, as a part of Order No. 185.]

SUPPLEMENT NO. 3 TO PRICE SCHEDULE NO. 1 FOR DISTRICT NO. 11
To all Code Members within District No. 11:

Effective January 24, 1938, the following addition shall be made on Price Schedule No. 1:³

¹ 2 F. R. 3281 (DI).

² 2 F. R. 3062 (DI).

Electric Shovel Coal Corporation, Clinton Mine, Seam VI, shall be added and price indexed as follows:

SIZE GROUPS

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
F	F	F	F	F	F	F	F	—	F	F	F	—	F	F

By order of the Commission.

Dated this 12th day of January, 1938.

F. W. McCULLOUGH, Secretary.

38-137

[Order No. 186]

AN ORDER MODIFYING ORDER NO. 101, AS MODIFIED BY ORDERS NOS. 114, 135 AND 165, AND SUPPLEMENTING THE SCHEDULE OF MINIMUM PRICES FOR COALS OF CODE MEMBERS PRODUCED WITHIN DISTRICT NO. 13, BY ADDING THERETO A SUPPLEMENTAL SCHEDULE OF PRICES, TO BE KNOWN AS "SUPPLEMENT NO. 3 TO SCHEDULE NO. 1—DISTRICT NO. 13"

(Order No. 186 (F. R. Doc. 38-138; Filed, January 14, 1938; 12:03 p. m.) appears in the issue for Saturday, January 15, 1938, at 3 F. R. 101. The following supplemental schedule of prices has been filed with the Division of the Federal Register, The National Archives, as a part of Order No. 186.)

SUPPLEMENT NO. 3 TO PRICE SCHEDULE NO. 1 FOR DISTRICT NO. 13¹

Supplemental Schedule of Minimum Prices for By-Product, Retort and Water Gas Coals of Code Members Produced within District No. 13, Established Pursuant to the Provisions of the "Bituminous Coal Act of 1937."

Effective: January 24, 1938.

Issued: January 12, 1938.

F. W. McCULLOUGH, Secretary.

District No. 13 (Tennessee-Georgia Mines), Prices in Cents per Net Ton of 2,000 Pounds for Shipment Into All Market Areas

SPECIAL BY PRODUCT COALS—SIZE GROUPS 7, 8, 9, 10

Ref.	Mine	Price
301	Battle Creek	235
302	Durham	235
303	College	235
304	Coalmont	235
305	Neck	235
306	Palmer	235
307	Daus	235
308	Whitwell	235

District No. 13 (Alabama Mines) Prices in Cents per Net Ton of 2,000 Pounds for Shipment Into the Market Areas Shown Below for Size Groups 2 and 3

RETORT AND WATER GAS COALS

Market areas	Size groups	
	2	3
42, 43, 44-65-91, 92	285	260
46	290	265
45-50-57-63	295	270
47-52-54-55-62	305	280
49-59-64-87-90	315	290
53-66	320	295
76, 77-79, 80	310	285
61	325	300
35, 36-83, 84, 85, 86-88, 89	340	315
81	345	320
58-60-67-71, 72, 73-75-78	350	325
66-68	360	335
48	375	350
74	375	350
70	385	360
69-82-93, 94, 95, 96, 97, 98-118, 119-123, 124	385	360

[Order No. 187]

AN ORDER MODIFYING ORDER NO. 89, AS MODIFIED BY ORDERS NOS. 126, 148 AND 159, AND SUPPLEMENTING THE SCHEDULE OF MINIMUM PRICES FOR COALS OF CODE MEMBERS PRODUCED WITHIN DISTRICT NO. 1, BY ADDING THERETO A SUPPLEMENTAL SCHEDULE OF PRICES, TO BE KNOWN AS "SUPPLEMENT NO. 4 TO PRICE SCHEDULE NO. 1—DISTRICT NO. 1"

The National Bituminous Coal Commission having by its Order No. 89, as modified by Orders Nos. 126, 148 and 159,¹ determined and established the Minimum Prices of Coals of Code Members Produced within District No. 1, as set forth in "Price Schedule No. 1—District No. 1", as supplemented by "Supplements No. 1, No. 2 and No. 3", and having determined that the provisions of subsections (a) and (b) of Part II of Section 4 of the Act and the purposes thereof will be carried out more effectively by supplementing the aforesaid Schedule and Supplements by a further Supplement as hereinafter provided:

Now, therefore, pursuant to Act of Congress entitled "An Act to Regulate Interstate Commerce in Bituminous Coal, and for other purposes" (Public, No. 48, 75th Cong., 1st Sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

1. That the Minimum Prices of Coals of Code Members Produced within District No. 1, established in "Price Schedule No. 1—District No. 1", as supplemented by "Supplements No. 1, No. 2 and No. 3 to Price Schedule No. 1—District No. 1", are hereby further supplemented as set forth in "Supplement No. 4 to Price Schedule No. 1—District No. 1", filed this day in the office of the Secretary of the Commission and made a part hereof by reference as though fully set forth herein, and such minimum prices, as shown in said Supplement No. 4, shall be and hereby are determined and established as Minimum Prices of Coals of Code Members within District No. 1, and shall be effective at 12:01 o'clock A. M., on the 27th day of January, 1938.

2. That said Order No. 89, as modified by Orders Nos. 126, 148 and 159, and as modified herein and by Supplement No. 4 to Price Schedule No. 1—District No. 1, shall remain in full force and effect.

3. That the Secretary of the Commission shall forthwith mail copies of this Order and Supplement No. 4 to Price Schedule No. 1—District No. 1 to the Consumers' Council; the Secretaries of the Bituminous Coal Producers' Boards; to Code Members within District No. 1; shall cause copies of this Order and said Supplement No. 4 to be made available for inspection by all interested parties at the Secretary's office of the Commission and at all Statistical Bureaus of the Commission; and shall cause to be published a copy of this Order in the FEDERAL REGISTER.

By order of the Commission.

Dated this 17th day of January, 1938.

[SEAL] F. WITCHER McCULLOUGH, Secretary.

SUPPLEMENT NO. 4 TO PRICE SCHEDULE NO. 1 FOR DISTRICT NO. 1

Supplemental Schedule of Minimum Prices for By-Product, Retort and Water Gas Coals of Code Members Produced in District No. 1 Established Pursuant to the Provisions of the Bituminous Coal Act of 1937.

Effective: January 27, 1938.

Issued: January 17, 1938.

F. W. McCULLOUGH, Secretary.

¹ 2 F. R. 3079 (DI).

¹ 2 F. R. 2992, 3301, 3375, 3383 (DI).

38-138

By-Product Prices (All Sizes)—Prices in Cents per net ton of 2,000 Pounds for Shipment into Market Areas as Shown Below

MARKET AREAS (LISTED BELOW)

Index	I-A out-side capes	I-A in-side capes	1	2	3	4	7	8	9	10	11 and West ¹	12 and 13
A	220	235	235	235	235	235	235	235	235	205	235	
B	220	235	235	235	235	235	235	235	235	205	235	
C	220	235	235	235	235	235	235	235	235	205	235	
C1	220	235	235	235	235	235	235	235	235	205	235	
C2	220	235	235	235	235	235	235	235	235	205	235	
D	222	237	237	237	230	215	215	225	215	205	215	
E	222	237	237	237	230	220	215	215	225	215	205	215
F	222	237	237	237	230	220	215	215	225	215	205	215

¹ Includes Areas Nos. 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 99, 100, 104, 105, 106, 107, 108, 109, 110, 111 and 112.

² Denotes changes.

NOTE.—The prices in these areas are net F. O. B. mines with no freight rate adjustment to be made.

Exception: Prices for delivery in Philadelphia Harbor, Pennsylvania, shall be 9¢ per net ton higher than shown for Market Area 1-A Inside Capes.

[F. R. Doc. 38-174; Filed, January 18, 1938; 11:21 a.m.]

[Order No. 188]

AN ORDER MODIFYING ORDER NO. 90, AS MODIFIED BY ORDERS NOS. 138, 149, 160 AND 183, AND SUPPLEMENTING THE SCHEDULE OF MINIMUM PRICES FOR COALS OF CODE MEMBERS PRODUCED WITHIN DISTRICT NO. 2, BY ADDING THERETO A SUPPLEMENTAL SCHEDULE OF PRICES, TO BE KNOWN AS "SUPPLEMENT NO. 5 TO PRICE SCHEDULE NO. 1—DISTRICT NO. 2"

The National Bituminous Coal Commission having by its Order No. 90, as modified by Orders Nos. 138, 149, 160 and 183,¹ determined and established the Minimum Prices of Coals of Code Members produced within District Number Two, as set forth in "Price Schedule Number One—District Number Two", as supplemented by "Supplements Number One, Number Two, Number Three and Number Four", and having determined that the provisions of subsections (a) and (b) of Part II of Section 4 of the Act and the purposes thereof will be carried out more effectively by supplementing the aforesaid Schedule and Supplements by a further Supplement as hereinafter provided:

Now, therefore, pursuant to Act of Congress entitled "An Act to Regulate Interstate Commerce in Bituminous Coal, and for other purposes" (Public, No. 48, 75th Cong., 1st Sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

1. That the Minimum Prices of Coals of Code Members produced within District Number Two, established in "Price Schedule Number One—District Number Two", as supplemented by "Supplements Number One, Number Two, Number Three and Number Four to Price Schedule Number One—District Number Two", are hereby further supplemented as set forth in "Supplement Number Five to Price Schedule Number One—District Number Two", filed this day in the office of the Secretary of the Commission and made a part hereof by reference as though fully set forth herein, and such minimum prices, as shown in said Supplement Number Five, shall be and hereby are determined and established as the Minimum Prices of Coals of Code Members within District Number Two, and shall be effective at 12:01 o'clock A. M. on the 27th day of January, 1938.

2. That said Order No. 90, as modified by Orders Nos. 138, 149, 160 and 183, and as modified herein and by Supplement Number Five to Price Schedule Number One—District Number Two, shall remain in full force and effect.

3. That the Secretary of the Commission shall forthwith mail copies of this Order and "Supplement Number Five to Price Schedule Number One—District Number Two" to the Consumers' Counsel; the Secretaries of the Bituminous Coal

Producers' Boards; to Code Members within District Number Two; shall cause copies of this Order and said Supplement Number Three to be made available for inspection by all interested parties at the Secretary's office of the Commission and at all Statistical Bureaus of the Commission; and shall cause to be published a copy of this Order in the FEDERAL REGISTER.

By Order of the Commission:

Dated this 17th day of January, 1938.

[SEAL]

F. W. McCULLOUGH, Secretary.

SUPPLEMENT NO. 5 TO PRICE SCHEDULE NO. 1 FOR DISTRICT NO. 2

Supplemental Schedule of Minimum Prices for By-Product, Retort and Water Gas Coals of Code Members Produced within District No. 2, Established Pursuant to the Provisions of the "Bituminous Coal Act of 1937".

Effective: January 27, 1938.

Issued: January 17, 1938.

F. W. McCULLOUGH, Secretary.

By-Product Prices¹—Run of Mine Coal (Unless Otherwise Indicated in Price Index)—Price in Cents per Net Ton of 2,000 Pounds for Shipment Into Market Areas as Shown Below

MARKET AREAS

Index	I-A out-side capes	I-A in-side capes	1	2	4	6	7	8	9	10	11 and west ¹	12 and 13
A	205	220	220	220	220	220	220	220	220	220	205	220
B	200	215	215	215	215	220	215	215	225	215	200	215
C	195	210	210	210	210	210	210	210	220	210	195	210
D	190	205	205	205	205	210	205	205	215	205	190	205
E	185	200	200	200	200	205	200	200	210	200	185	200

¹ Includes: 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 99, 100, 104, 105, 106, 107, 108, 109, 110, 111, 112.

² Exception: Prices for deliveries in Philadelphia Harbor, Pa. shall be 9 cents per net ton higher than for Market Area No. 1-A Inside Capes.

BASIS FOR FREIGHT RATE ADJUSTMENT FOR BY-PRODUCT

Designated Base Rate—Pittsburgh District

Rates higher than base.—On shipments destined within the above named Market Areas the minimum f. o. b. mine price may be reduced by an amount in cents per net ton (not in excess of 35¢) sufficient to equalize the actual freight rate with the Pittsburgh District base rate indicated above.

Rates lower than base.—Where the applying freight rate is less than the Pittsburgh District base rate designated above the minimum f. o. b. mine price shall be increased by an amount in cents per net ton sufficient to equalize the actual freight rate with such base rate: provided that the amount of such increase may be limited to a maximum of 35¢.

[F. R. Doc. 38-175; Filed, January 18, 1938; 11:21 a.m.]

[Order No. 189]

AN ORDER MODIFYING ORDER NO. 91, AS MODIFIED BY ORDERS NOS. 128, 150 AND 161, AND SUPPLEMENTING THE SCHEDULE OF MINIMUM PRICES FOR COALS OF CODE MEMBERS PRODUCED WITHIN DISTRICT NO. 3, BY ADDING THERETO A SUPPLEMENTAL SCHEDULE OF PRICES, TO BE KNOWN AS "SUPPLEMENT NO. 4, TO PRICE SCHEDULE NO. 1—DISTRICT NO. 3"

The National Bituminous Coal Commission having by its Order No. 91, as modified by Orders Nos. 128, 150 and 161,¹ determined and established the Minimum Prices of Coals of Code Members Produced within District Number Three, as set forth in "Price Schedule No. 1—District Number Three", as supplemented by "Supplements No. 1, No. 2 and No. 3", and having determined that the provisions of Subsections (a) and (b) of Part II of Section 4 of the Act and the pur-

¹ Cancels and supersedes table appearing at 2 F. R. 3386 (DI).

² F. R. 3017, 3308, 3377, 3386 (DI).

poses thereof will be carried out more effectively by supplementing the aforesaid Schedule and Supplements by a further Supplement as hereinafter provided:

Now, therefore, pursuant to Act of Congress entitled "An Act to Regulate Interstate Commerce in Bituminous Coal, and for other purposes" (Public, No. 48, 75 Cong., 1st Sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

1. That the Minimum Prices of Coals of Code Members Produced within District Number Three, established in "Price Schedule Number One—District Number Three", as supplemented by "Supplements No. 1, No. 2 and No. 3 to Price Schedule Number One—District Number Three", are hereby further supplemented as set forth in "Supplement No. 4 to Price Schedule Number One—District Number Three", filed this day in the office of the Secretary of the Commission and made a part hereof by reference as though fully set forth herein, and such minimum prices, as shown in said Supplement No. 4, shall be and hereby are determined and established as Minimum Prices of Coals of Code Members within District Number Three, and shall be effective at 12:01 o'clock A. M., on the 27th day of January, 1938.

2. That said Order No. 91, as modified by Orders Nos. 128, 150 and 161, and as modified herein and by Supplement No. 4 to Price Schedule Number One—District Number Three, shall remain in full force and effect.

3. That the Secretary of the Commission shall forthwith mail copies of this Order and "Supplement No. 4 to Price Schedule Number One—District Number Three" to the Consumers' Counsel; the Secretaries of the Bituminous Coal Producers' Boards; to Code Members within District Number Three; shall cause copies of this Order and said Supplement No. 4 to be made available for inspection by all interested parties at the Secretary's office of the Commission and at all Statistical Bureaus of the Commission; and shall cause to be published a copy of this Order in the *FEDERAL REGISTER*.

By order of the Commission.

Dated this 17th day of January, 1938.

[SEAL]

F. W. McCULLOUGH, *Secretary*.

SUPPLEMENT NO. 4 TO PRICE SCHEDULE NO. 1 FOR DISTRICT NO. 3

Supplemental Schedule of Minimum Prices for By-Product, Retort and Water Gas Coals of Code Members Produced within District No. 3, Established Pursuant to the Provisions of the "Bituminous Coal Act of 1937".

Effective January 27, 1938.

Issued: January 17, 1938.

F. W. McCULLOUGH, *Secretary*.

By-Product Prices¹ (All Sizes)—Prices in Cents per Net Ton of 2,000 Pounds for Shipment Into Market Areas as Shown Below

MARKET AREAS

Index	1-A out-side capes	1-A inside capes	1	2	4	6	7	8	9	10	11 and West ²	12
A (Sewell)	210	225	225	225	225	225	225	210	220	210	210	225
D (Low Sulphur)	195	210	210	210	195	215	191	195	205	195	195	210

¹ Includes: Market Areas 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 99, 100, 104, 105, 106, 107, 108, 109, 110, 111, and 112.

² Exception: Prices for deliveries in Philadelphia Harbor, Pa., shall be 9 cents per net ton higher than for Market Area No. 1-A Inside Capes.

NOTE.—The prices in these areas are net, F. O. B. mines with no freight rate adjustments to be made.

[F. R. Doc. 38-176; Filed, January 18, 1938; 11:21 a. m.]

** Cancels and supersedes table appearing at 2 F. R. 3387 (DI).*

[Order No. 190]

AN ORDER MODIFYING ORDER NO. 95, AS MODIFIED BY ORDERS NOS. 131, 163, AND 179, AND SUPPLEMENTING THE SCHEDULE OF MINIMUM PRICES FOR COALS OF CODE MEMBERS PRODUCED WITHIN DISTRICT NO. 7, BY ADDING THERETO A SUPPLEMENTAL SCHEDULE OF PRICES, TO BE KNOWN AS "SUPPLEMENT NO. 4 TO PRICE SCHEDULE NO. 1—DISTRICT NO. 7"

The National Bituminous Coal Commission having by its Order No. 95, as modified by Orders Nos. 131, 163 and 179,¹ determined and established the Minimum Prices of Coals of Code Members produced within District No. 7, as set forth in "Price Schedule No. 1—District No. 7", and "Supplements Nos. 1, 2 and 3 to Price Schedule No. 1—District No. 7", and having determined that the provisions of subsections (a) and (b) of Part II of Section 4 of the Act and the purposes thereof will be carried out more effectively by supplementing the aforesaid Price Schedule and Supplements by a further Supplement as hereinafter provided:

Now, therefore, pursuant to Act of Congress entitled "An Act to Regulate Interstate Commerce in Bituminous Coal, and for other purposes" (Public, No. 48, 75th Cong., 1st Sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

1. That the Minimum Prices of Coals of Code Members produced within District No. 7, established in Price Schedule No. 1—District No. 7, and Supplements Nos. 1, 2 and 3 thereto, are hereby further supplemented as set forth in Supplement No. 4 to Price Schedule No. 1—District No. 7, filed this day in the office of the Secretary of the Commission and made a part hereof by reference as though fully set forth herein, and such minimum prices as shown in said Supplement No. 4 shall be and hereby are determined and established as Minimum Prices of Coals of Code Members within District No. 7, and shall be and become effective at 12:01 o'clock A. M., on the 27th day of January, 1938.

2. That said Orders Nos. 95, 131, 163 and 179, and Price Schedule No. 1—District No. 7, and Supplements Nos. 1, 2 and 3 thereto, except as modified herein and by said Supplement No. 4 to Price Schedule No. 1—District No. 7, shall remain in full force and effect.

3. That the Secretary of the Commission shall forthwith mail copies of this Order and Supplement No. 4 to Price Schedule No. 1—District No. 7 to the Consumers' Counsel; the Secretaries of the Bituminous Coal Producers' Boards and to Code Members within District No. 7; shall cause copies of this Order and said Supplement No. 4 to be made available for inspection by all interested parties at the Secretary's office of the Commission and at all Statistical Bureaus of the Commission; and shall cause to be published a copy of this Order in the *FEDERAL REGISTER*.

By order of the Commission.

Dated this 17th day of January, 1938.

[SEAL]

F. W. MCCULLOUGH, *Secretary*.

SUPPLEMENT NO. 4 TO PRICE SCHEDULE NO. 1 FOR DISTRICT NO. 7

Supplemental Schedule of Minimum Prices for By-Product, Retort and Water Gas Coals of Code Members Produced within District No. 7, Established Pursuant to the Provisions of the "Bituminous Coal Act of 1937".

Effective: January 27, 1938.

Issued: January 17, 1938.

F. W. MCCULLOUGH, *Secretary*.

¹ 2 F. R. 3032, 3311, 3387 (DI); 3 F. R. 85 (DI).

High Volatile Mines By-Product Retort and Water Gas—Prices in Cents per Net Ton of 2,000 Pounds for Shipment Into All Market Areas,¹ Subject to Exceptions Stated Below

Size groups	Price index				
	A	B	C	D	E
17.	1245	1240	1235	1230	1225
18.	1235	1230	1225	1220	1215
19.	1225	1220	1215	1210	1205
20.	1215	1210	1205	1200	1195

¹ Above Prices on By-Product coal may be reduced 8¢ per net ton for deliveries in Philadelphia Harbor, Pa., of Market Area No. 1A when shipped via Tidewater from Hampton Roads, Va.

EXCEPTIONS

Mines having freight rates applying for shipment into the market areas shown below, which are lower or higher as the case may be than the base rate indicated for such areas, must increase or may reduce the price applicable to the size and grade of coal shipped by an amount equal to such differential but in no case in excess of twenty (20¢) cents per net ton. No absorption is permitted into areas not specifically excepted.

Market Areas 1, 1A, 2, 40, 41, 42.—Use Kanawha, Logan, Kenova-Thacker Base Rate.

Market Areas 11, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 99, 100, 104, 105, 106, 107, 108, 109, 110, 111, 112.—Use (Inner Crescent) Kanawha, Logan, Kenova-Thacker Base Rate.

Market Areas 39, 43.—Use Virginia District (Group 14) Base Rate.

[F. R. Doc. 38-177; Filed, January 18, 1938; 11:22 a. m.]

[Order No. 191]

AN ORDER MODIFYING ORDER NO. 96, AS MODIFIED BY ORDERS NOS. 132, 164 AND 184, AND SUPPLEMENTING THE SCHEDULE OF MINIMUM PRICES FOR COALS OF CODE MEMBERS PRODUCED WITHIN DISTRICT NUMBER EIGHT, BY ADDING THERETO A SUPPLEMENTAL SCHEDULE OF PRICES, TO BE KNOWN AS "SUPPLEMENT NO. 4 TO PRICE SCHEDULE NUMBER ONE—DISTRICT NUMBER EIGHT"

The National Bituminous Coal Commission having by its Order No. 96, as modified by Orders Nos. 132, 164 and 184,² determined and established the Minimum Prices of Coals of Code Members produced within District Number Eight, as set forth in "Price Schedule Number One—District Number Eight", and "Supplement Nos. 1, 2 and 3 to Price Schedule Number One—District Number Eight", and having determined that the provisions of subsections (a) and (b) of Part II of Section 4 of the Act and the purposes thereof will be carried out more effectively by supplementing the aforesaid Price Schedule and Supplements by a further Supplement as hereinafter provided:

Now, therefore, pursuant to Act of Congress entitled "An Act to Regulate Interstate Commerce in Bituminous Coal, and for other purposes" (Public, No. 48, 75th Cong., 1st Sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission hereby orders:

1. That the Minimum Prices of Coals of Code Members produced within District Number Eight, established in Price Schedule Number One—District Number Eight, and Supplements Nos. 1, 2 and 3 thereto, are hereby further supplemented as set forth in Supplement No. 4 to Price Schedule Number One—District Number Eight, filed this day in the office of the Secretary of the Commission and made a part hereof by reference as though fully set forth herein, and such minimum prices as shown in said Supplement No. 4

shall be and hereby are determined and established as Minimum Prices of Coals of Code Members within District Number Eight and shall be and become effective at 12:01 o'clock A. M., on the 27th day of January, 1938.

2. That said Orders Nos. 96, 132, 164 and 184 and Price Schedule Number One—District Number Eight, and Supplements Nos. 1, 2 and 3 thereto, except as modified herein and by Supplement No. 4 to Price Schedule Number One—District Number Eight, shall remain in full force and effect.

3. That the Secretary of the Commission shall forthwith mail copies of this Order and Supplement No. 4 to Price Schedule Number One—District Number Eight to the Consumers' Counsel; the Secretaries of the Bituminous Coal Producers' Boards, and to Code Members within District Number Eight; shall cause copies of this Order and said Supplement No. 4 to be made available for inspection by all interested parties at the Secretary's office of the Commission and at all Statistical Bureaus of the Commission; and shall cause to be published a copy of this Order in the FEDERAL REGISTER.

By order of the Commission.

Dated this 17th day of January, 1938.

[SEAL]

F. WITCHER McCULLOUGH, Secretary.

SUPPLEMENT NO. 4 TO PRICE SCHEDULE NO. 1, DISTRICT NO. 8

Supplemental Schedule of Minimum Prices for By-Product, Retort and Water Gas Coals¹ of Code Members Produced in District No. 8 Established Pursuant to the Provisions of the Bituminous Coal Act of 1937.

Effective: January 27, 1938.

Issued: January 17, 1938.

F. W. McCULLOUGH, Secretary.

By-Product, Retort and Water Gas (Size Groups 17, 18, 19, 20)—Prices in Cents Per Net Ton of 2000 pounds for shipment into all Market Areas¹, Subject to Exceptions Stated Below

Size groups	Price index				
	A	B	C	D	E
17.	1245	1240	1235	1230	1225
18.	1235	1230	1225	1220	1215
19.	1225	1220	1215	1210	1205
20.	1215	1210	1205	1200	1195

¹ Above prices on By-Product coal may be reduced 8¢ per net ton for deliveries in Philadelphia Harbor, Pa., of Market Area No. 1A when shipped via Tidewater from Hampton Roads, Va.

EXCEPTIONS

Mines having freight rates applying for shipment into the market areas shown below, which are higher than the base rate indicated for such areas may reduce the price applicable to the size and grade of coal shipped by an amount equal to such differential but in no case in excess of twenty (20¢) cents per net ton. No absorption is permitted into areas not specifically excepted.

Market Areas 1, 1A, 2, 40, 41, 42.—Use Kanawha, Logan, Kenova-Thacker Base Rate, except as follows:

For Market Areas 1, 1A, 2 and 3, Elk River Coal and Lumber Co. may apply the following prices per net ton without freight absorption: Group 17, 232; Group 18, 222; Group 19, 212; Group 20, 197.

Market Areas 11, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 99, 100, 104, 105, 106, 107, 108, 109, 110, 111, 112.—Use (Inner Crescent) Kanawha, Logan, Kenova-Thacker Base Rate.

Market Areas 39, 43.—Use Virginia District (Southern Ry., Group 14) Base Rate.

Market Areas 44, 45, 46, 55, 56, 65.—Use Harlan District Base Rate.

[F. R. Doc. 38-178; Filed, January 18, 1938; 11:22 a. m.]

¹ Cancels and supersedes matter appearing at 2 F. R. 3388 (DI).

² 2 F. R. 3040, 3281, 3388 (DI); 3 F. R. 101 (DI).

INTERSTATE COMMERCE COMMISSION.

[Ex Parte No. 123]

FIFTEEN PERCENT CASE, 1937

JANUARY 17, 1938.

Notice To All Concerned.

The above-entitled proceeding¹ is assigned for oral argument at 10 o'clock a. m., standard time, Monday, January 31, 1938, at the offices of the Commission, Washington, D. C.

Requests for allotments of time should be made in writing as soon as possible and must reach the Commission not later than January 27.

Written briefs may be filed on or before February 9, 1938, and the proceeding will be submitted for decision as of that date. Reply or answering briefs will not be received.

In view of the short time permitted for the filing of briefs, the Commission will waive its rules of practice requiring that briefs containing more than 40 pages be printed and that briefs contain an abstract of the evidence relied upon. The briefs may therefore be in the nature of written arguments and memoranda of authorities. The Commission urges parties whose interests are common to cooperate in presenting their contentions in a single argument, and by a single brief, wherever that is possible. The evidence is being currently abstracted by the Commission, and a copy of this abstract is supplied to each member of the Commission.

If the applicants file briefs, they shall serve copies on all protestants. Counsel for protestants who file briefs should send 20 copies to this Commission and 25 copies to R. V. Fletcher, Transportation Building, Washington, D. C., of counsel for the applicants. Counsel for protestants who desire copies of briefs filed on behalf of any other protestants should make a request directly on counsel for the latter, as soon as possible, and counsel who receive such requests in good time will be expected to supply copies to those who so apply.

By the Commission.

[SEAL]

W. P. BARTEL, Secretary.

[F. R. Doc. 38-180; Filed, January 18, 1938; 12:13 p. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 18th day of January A. D., 1938.

[File No. 31-51]

IN THE MATTER OF THE APPLICATION OF BURLINGTON RAILWAY AND LIGHT COMPANY, AMERICAN UTILITIES CORPORATION, DENMARK LIGHT AND TELEPHONE CORPORATION, TRI STATES POWER CORPORATION, FRANK H. WARREN RECEIVER FOR VAN BUREN LIGHT AND POWER COMPANY, THE BURLINGTON RAILWAY & LIGHT COMPANY, BURLINGTON IMPROVEMENT COMPANY, THE BURLINGTON IMPROVEMENT COMPANY, PEOPLES GAS AND ELECTRIC COMPANY, PEOPLES GAS AND IMPROVEMENT COMPANY, THE PEOPLES GAS AND ELECTRIC COMPANY OF AMERICA, CENTRAL WEST UTILITIES COMPANY, WESTERN SECURITIES COMPANY

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 3 of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by Burlington Railway and Light Company, American Utilities Corporation, Denmark Light and Telephone Corporation, Tri States Power Corporation, Frank H. Warren, Receiver for Van Buren Light and Power Company, The Burlington Railway & Light Company, Burlington Improvement Company, The Burlington Improvement Company, Peoples Gas and Electric Company, Peoples Gas and

Improvement Company, The Peoples Gas and Electric Company of America, Central West Utilities Company and Western Securities Company asking for exemption from the provisions of the Act;

It is ordered. That a hearing on such matter be held on February 9, 1938, at 10:30 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW, Washington, D. C. On such day the hearing-room clerk in Room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered. That Richard Townsend or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to continue or postpone said hearing from time to time or to a date thereafter to be fixed by such presiding officer.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before February 4, 1938.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR, Secretary.

[F. R. Doc. 38-183; Filed, January 18, 1938; 1:00 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 18th day of January, A. D. 1938.

[File No. 31-385]

IN THE MATTER OF THE APPLICATION OF GODFREY L. CABOT, INC.

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 3 of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by Godfrey L. Cabot, Inc., asking for exemption from the provisions of the Act;

It is ordered. That a hearing on such matter be held on February 15, 1938, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW, Washington, D. C. On such day the hearing-room clerk in Room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered. That Richard Townsend or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to continue or postpone said hearing from time to time or to a date thereafter to be fixed by such presiding officer.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before February 10, 1938.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR, Secretary.

[F. R. Doc. 38-184; Filed, January 18, 1938; 12:59 p. m.]

¹ 2 F. R. 3242 (D.I.).

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 18 day of January, A. D. 1938.

[File No. 30-31]

IN THE MATTER OF CENTRAL NEW HAMPSHIRE POWER COMPANY

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 5 (d) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by Central New Hampshire Power Company, a registered holding company, requesting an order that such applicant has ceased to be a holding company.

It is ordered. That a hearing on such matter be held on February 3, 1938, at 10 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW, Washington, D. C. On such day the hearing-room clerk in Room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered. That Charles S. Lobingier or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to continue or postpone said hearing from time to time or to a date thereafter to be fixed by such presiding officer.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before January 29, 1938.

By the Commission.

[SEAL] **FRANCIS P. BRASSOR, Secretary.**

[F. R. Doc. 38-181; Filed, January 18, 1938; 12:59 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 18th day of January, A. D. 1938.

[File No. 31-112]

IN THE MATTER OF THE APPLICATION OF THE PERMIAN OIL & GAS COMPANY, THE HOME UTILITIES COMPANY, INTERSTATE UTILITIES COMPANY

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 2 (a) (4) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by The Permian Oil & Gas Company, The Home Utilities Company, and Interstate Utilities Company for an order declaring them not to be gas-utility companies as that term is defined in Section 2 (a) (4) of the Act;

It is ordered. That a hearing on such matter be held on February 3, 1938, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW, Washington, D. C. On such day the hearing-room clerk in Room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered. That Richard Townsend or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby

authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to continue or postpone said hearing from time to time or to a date thereafter to be fixed by such presiding officer.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before January 29, 1938.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR, Secretary.

[F. R. Doc. 38-183; Filed, January 18, 1938; 12:59 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 18th day of January, A. D. 1938.

[File No. 31-403]

IN THE MATTER OF THE APPLICATION OF UTILITIES HOLDING CORPORATION

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 3 of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by Utilities Holding Corporation asking for exemption from the provisions of the Act;

It is ordered. That a hearing on such matter be held on February 23, 1938, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW, Washington, D. C. On such day the hearing-room clerk in Room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered. That Richard Townsend or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to continue or postpone said hearing from time to time or to a date thereafter to be fixed by such presiding officer.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before February 18, 1938.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR, Secretary.

[F. R. Doc. 38-182; Filed, January 18, 1938; 12:59 p. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 18th day of January, A. D. 1938.

[File Nos. 46-88 and 32-78; 46-89 and 54-2]

IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY AND WASHINGTON AND SUBURBAN COMPANIES

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 10 (a) (1) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by Washington Gas Light Com-

pany, a subsidiary company of Washington and Suburban Companies, a registered holding company, for approval of the acquisition by applicant of all of the outstanding securities of two of applicant's associate companies, Washington Suburban Gas Company and Alexandria Gas Company (except as to two notes of Alexandria Gas Company aggregating \$518,269), from said Washington and Suburban Companies, in consideration of the issuance by applicant of 8,100 shares of applicant's \$4.50 Cumulative Convertible Preferred Stock.

An application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by said Washington Gas Light Company for exemption from the provisions of section 6 (a) of said Act of the issue and sale by applicant of 8,100 shares of its \$4.50 Cumulative Convertible Preferred Stock, without par value and 24,300 shares of its Common Stock, without par value (said common stock to be issued against exercise of conversion rights), it being stated by applicant that such issue and sale will not be effected unless authorized by the Public Utilities Commission of the District of Columbia, where applicant is organized and does business and that such stock will be issued as the consideration to be paid for all the outstanding securities of two associate public-utility companies, Alexandria Gas Company and Washington Suburban Gas Company (except as to two notes of Alexandria Gas Company aggregating \$518,269).

An application pursuant to section 10 (a) (1) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by Washington and Suburban Companies, a registered holding company, for approval of the acquisition by it of 8,100 shares of \$4.50 Cumulative Convertible Preferred Stock of Washington Gas Light Company.

An application pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by said Washington and Suburban Companies for approval of a plan for the divestment of control of its subsidiary public-utility and holding companies,

involving the sale by applicant of its holdings of 327,588 shares of the Common Stock of Washington Gas Light Company, the sale of all of the outstanding securities of Washington and Suburban Gas Company and Alexandria Gas Company to said Washington Gas Light Company (except as to two notes of Alexandria Gas Company aggregating \$518,269), and the sale either of applicant's holdings in eleven intermediate holding companies which in turn control New York and Richmond Gas Company, or of the holdings of such intermediate holding companies in said New York and Richmond Gas Company.

It is ordered, That a hearing on such matters be held on February 3, 1938, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in Room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Robert P. Reeder or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to continue or postpone said hearing from time to time or to a date thereafter to be fixed by such presiding officer.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before January 29, 1938.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR, Secretary.

[F. R. Doc. 38-166; Filed, January 18, 1938; 1:00 p. m.]

